

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

ALACRITECH, INC.)(
Plaintiff,)(CIVIL DOCKET NO.
)(2:16-CV-00693-JRG-RSP
vs.)(MARSHALL, TEXAS
)(
TIER 3, ET AL)(
Defendants,)(
and)(
INTEL CORPORATION, ET AL)(
Intervenors)(SEPTEMBER 14, 2017

MOTIONS HEARING

BEFORE THE HONORABLE ROY S. PAYNE

UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF: (See sign-in sheets docketed in
minutes of this hearing.)

FOR THE DEFENDANT: (See sign-in sheets docketed in
minutes of this hearing.)

COURT REPORTER: Ms. Tammy L. Goolsby, CSR

Proceedings taken by Machine Stenotype; transcript was produced
by a Computer

Tammy Goolsby, CSR
903-445-5355

I N D E X

SEPTEMBER 14, 2017:

	PAGE
Appearances	1
Hearing	3
Court Reporter's Certificate	117

1 P R O C E E D I N G S

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Good morning. Please be seated.

4 For the record, we're here for the motion hearing in
5 Alacritech versus Tier 3, et al, or maybe it's CenturyLink, et
6 al. Anyway, Lead Case No. 2:16-393.

7 Could counsel note their appearances for the record?

8 MS. HENRY: Good morning, Your Honor. Claire Henry
9 on behalf of Alacritech, joined by my co-counsel Claude Stern
10 and Joe Paunovich.

11 MR. STERN: Good morning.

12 MR. PAUNOVICH: Good morning.

13 THE COURT: All right. Good morning, and thank you,
14 Ms. Henry.

15 MS. SMITH: Good morning, Your Honor. On behalf of
16 Cavium, Melissa Smith and Karineh Khachatourian, and we're
17 ready to proceed, Your Honor.

18 THE COURT: All right. Thank you, Ms. Smith.

19 MS. KHACHATOURIAN: Good morning.

20 THE COURT: Good morning.

21 We've got three motions on the docket and a couple of
22 related motions that we might be able to take up as well.
23 Unless counsel have a better idea, we can just start with the
24 earliest of them, which I think is the motion regarding the
25 infringement contentions. I guess I'd like to get Cavium's

1 position on that now.

2 MS. KHACHATOURIAN: Your Honor, I want to update you
3 on some developments that just occurred within the last 24
4 hours.

5 We received Alacritech's supplemental infringement
6 contentions that are comprised of those two boxes on the floor.
7 We were served by electronic mail around midnight on the 12th.
8 I got on a plane six hours later to join you all yesterday. It
9 took a day to print them out.

10 And so I'm in no position, frankly, to review them to
11 see whether the issues that we've been complaining about and
12 that your Court -- Your Honor acknowledged in the order
13 regarding Intel and its motion to strike infringement
14 contentions has been cured.

15 So I think the best way to proceed would be with
16 respect to the contentions to carry it over until we've had a
17 chance to review the contentions.

18 THE COURT: All right. Thank you, Ms. Khachatourian.

19 MR. PAUNOVICH: Good morning, Your Honor. Joe
20 Paunovich.

21 We would disagree with counsel's recommendation to
22 carry over the motion. The motion that is pending by Cavium is
23 directed to our February 2017 contentions which were served on
24 them.

25 When Your Honor entered your order regarding Intel's

1 motion to strike the contentions directed to Intel, you gave
2 very specific instructions that the parties should chart every
3 model of the identified Intel accused instrumentalities or,
4 two, explain and support as part of its contentions with
5 specificity and supporting documentary or declaratory
6 evidence -- declaratory evidence, its assertions that there are
7 no material differences between the accused products -- accused
8 devices that affect its infringement theories for the uncharted
9 products relative to the charted products.

10 We took Your Honor's order to heart. We promptly
11 updated our contentions to Intel. Without any motions to
12 strike pending by any other Defendant, we reached out to each
13 of the Defendants in light of your Court's guidance and agreed
14 and suggested that we update our contentions for everyone based
15 on that order.

16 That's exactly what we've done. We've served,
17 putting side the dramatic effect, 47 charts to every single
18 accused product that is currently identified in this case,
19 although we'll get to in our motion the failure of Cavium to
20 identify additional products that are accused.

21 But even for those, the ones that we've been able to
22 discover, we've charted all those and included them as part of
23 a separate chart, all supported by an expert declaration and
24 detailed evidentiary analysis analyzing exactly the differences
25 that Cavium, which are very few, identified alleged difference

1 between those products.

2 If we look at the contentions and we look at what
3 Cavium has done and said in its interrogatory responses,
4 they've said for all their accused product fall into seven
5 product families. This is not our creation of some
6 representative nature of the products, but that's what they
7 said, and that's how we have charted them.

8 And we have further supported that, not just saying
9 here's a family and take our word for it, but rather detailed
10 evidence that we've been able to gather from the productions in
11 the case, as well as our source code review, and, frankly, we
12 think it's more than sufficient.

13 We've done the same thing for each of the Defendants
14 at this point. To my knowledge, we haven't had any complaint
15 from any of the other Defendants, and wouldn't expect there to
16 be, and certainly not briefed in this motion. I don't think it
17 would be we can come back on this motion to the extent they do
18 try to identify any distinctions.

19 THE COURT: Mr. Paunovich, the -- the concern I guess
20 I have primarily about the contentions is simply the timing of
21 it.

22 This hearing has been set for, I guess, about two
23 weeks, and obviously you knew that these new contentions would
24 not have reached counsel in time for them to have analyzed them
25 in advance of this hearing, so I wish that either you had done

1 that sooner or, if that was not possible, had at least notified
2 the Court so we could see whether the hearing could be
3 scheduled at a time when Cavium would have had time to review
4 this.

5 But I hear what you're saying about the fact that the
6 motion is directed at the original contentions, but I'm not
7 sure what the purpose of going through that would be now that
8 you've supplanted those with these supplemental contentions.
9 Just check on the word.

10 MR. PAUNOVICH: May I comment on the timing, Your
11 Honor?

12 THE COURT: Go ahead.

13 MR. PAUNOVICH: The -- we tried to avoid burdening
14 the Court with this very issue by reaching out to each of the
15 Defendants, including Cavium, about supplementation right away,
16 and they knew from literally a day or two, if I'm recalling it
17 correctly, after the Court's July 14th order that we would
18 agree to supplement our contentions.

19 Part of the -- part of the issue here and actually
20 what is really at the core of this hearing -- and you'll hear
21 from Mr. Stern shortly -- unlike the other Defendants, we've
22 been fighting tooth and nail with Cavium for literally eight
23 months in this case to get the information that would allow us
24 to supplement these contentions, specifically, as Your Honor
25 may recall, the RTL code.

1 The differences that they have identified in their
2 interrogatory, which is what Your Honor's order to Intel
3 requires us to address in our contentions, is directed to the
4 RTL code, which they refuse give us despite court order and
5 eventually did.

6 In addition to that, there's a number of
7 interrogatories that we've had pending for basic technical
8 information design guides and specifications for 61 accused
9 products that put us in a position -- a very awkward position,
10 frankly, where we -- we simply, unlike all the other Defendants
11 where we had the documents, they agreed to give us the code,
12 gave us the documents, we could simply start working on their
13 contentions right away.

14 So we met and conferred extensively with Cavium's
15 counsel about these issues. We asked them to please give us
16 these technical documents so that we can go ahead and make this
17 a fulsome -- the best possible update that we can. We don't
18 want to do this serially. We were unable to reach an
19 agreement.

20 Nevertheless we said we don't want to end up in
21 motion practice here, so if you want us to do it serially, when
22 or if you're required to produce these documents, we'll go
23 ahead and update now based on what we have, the code that we do
24 have and the documents that we do have.

25 We told them that. We said if you file this

1 motion -- and here's when we're going to produce it, in early,
2 first week of September. And if you file the motion, it's
3 going to be a moot motion because that's when we're going to
4 supplement. That's the timing of when we're able to do that
5 and how we staggered our production of these based on the
6 depositions that are scheduled.

7 We're weeks away from Cavium's -- any -- any Cavium
8 witness depositions. There's absolutely no prejudice to them.
9 We told them exactly what we were going to do, asked them not
10 to file the motion.

11 THE COURT: All right. I have seen some of this
12 recounted in briefs, but what I'm going to do at this point is
13 just say that the motion is moot as to the original
14 contentions, and I will carry the motion to allow Cavium to
15 supplement it if they continue to have issues that they want to
16 litigate regarding the amended contentions.

17 But I -- I think that's all I can accomplish on that
18 at this time, and we'll take up the timing of this when we get
19 to the end of the hearing as far as whether we're going to
20 schedule another event or whether set a deadline for Cavium to
21 notify you or the Court or both if there are further issues
22 with the amended contentions.

23 MR. PAUNOVICH: Thank you, Your Honor.

24 One point of clarification on this before I step
25 away.

1 THE COURT: All right.

2 MR. PAUNOVICH: In our opposition to their motion --
3 and it was unclear to us because of the posture of not having
4 an order directed to all Defendants -- the contentions that we
5 served on all Defendants -- we would just ask for some
6 clarification whether you want a formal separate motion for us
7 to amend to adopt the new contentions or if this would, in
8 essence, serve as an adoption of those contentions, subject, of
9 course, to counsels raising any issues in the carried motion.

10 THE COURT: You're talking about whether you need a
11 motion for leave to supplement your contentions?

12 MR. PAUNOVICH: Correct.

13 THE COURT: As to Cavium, we can take that up here.
14 Obviously if -- if you get an agreement from the other
15 Defendants that they have no objection to your service of the
16 amended contentions, then you don't need to file a motion for
17 leave.

18 MR. PAUNOVICH: Okay.

19 THE COURT: But I don't want to take that up with the
20 other Defendants being absent, but I -- if you don't get
21 agreement from them, then you should file a motion for leave.

22 MR. PAUNOVICH: Okay. Thank you, Your Honor.

23 THE COURT: All right.

24 MS. KHACHATOURIAN: Your Honor, I don't -- if the
25 Court would like me to go through the actual events that

1 occurred, Mr. Paunovich misstated many facts, but I think for
2 the Court's efficiency, I'll just move on from that, but please
3 understand I don't agree.

4 THE COURT: And I do understand that, and I'll ask do
5 you object to the service of the amended contentions? If not,
6 I'm going to say that they're -- I guess they have a motion --
7 well, I don't know. I guess that it is, in effect, an oral
8 motion for leave to serve them, and I'll rule on that, but I
9 want to give you a chance to be heard first.

10 MS. KHACHATOURIAN: Thank you, Your Honor.

11 Well, my understanding -- I have not looked at the
12 contentions yet obviously, but my understanding, at least from
13 Intel, I believe Alacritech filed a motion to amend with
14 respect to Intel because they actually added new products.

15 So they took the Court's order as an opportunity to
16 now expand the case and add new products. I suspect they've
17 done the same with us. I can't confirm that yet.

18 They also served supplemental contentions on Dell.
19 Your Honor may recall Dell joined in Intel's motion, and the
20 Alacritech and Dell came to a stipulation after Your Honor's
21 order, and they agreed to serve supplemental contentions on
22 August 25th.

23 As a note, some of those contentions included Cavium
24 products. As the Court may remember, Cavium intervened in this
25 lawsuit because of products it sold to Dell. They have added

1 new Cavium products in Dell's contentions.

2 So while we do not object to the service of the
3 contentions, we may very well have objections to the content,
4 including adding new products at this late date without seeking
5 a formal motion to amend, so we may end up doing what Intel is
6 doing. Dell may do the same thing. It's unclear. I know
7 CenturyLink was served with their supplemental contentions I
8 believe on Monday.

9 We had been asking for supplemental contentions two
10 hours after Your Honor's order came out. We asked that they be
11 served the same time as Dell. Alacritech refused. Then they
12 said they were going to serve September 5th. That didn't
13 happen. Then they said they were going to serve September 8th.
14 That didn't happen. And the Friday before Labor Day, Mr. Stern
15 informed me that we wouldn't get the contentions until the 12th
16 because of expert scheduling. They were busy apparently.

17 THE COURT: Well what I'll do then is carry the
18 motion for leave to serve the amended contentions until a date
19 that we'll set to get a response from you.

20 MS. KHACHATOURIAN: I appreciate that, Your Honor.
21 Thank you.

22 THE COURT: Okay.

23 MS. KHACHATOURIAN: So then I believe, unless the
24 Court has a different thought, the next thing up is Cavium's
25 motion to compel interrogatory responses against Alacritech.

1 THE COURT: I'm happy to start with that.

2 MS. KHACHATOURIAN: Thank you, Your Honor.

3 The two interrogatories at issue -- and this was
4 attached to our brief -- is -- the first one essentially has to
5 do with pre-lawsuit communications and offers of licensing
6 between Cavium and QLogic and Alacritech given that they have
7 alleged inducement, willful infringement, contributory
8 infringement, and this should all be information that's in
9 Alacritech's possession as they are the ones putting forth
10 these communications presumably.

11 The second one was frankly an opportunity and a try
12 to -- to get more notice or any notice of Alacritech's actual
13 infringement allegations against us because, as the Court is
14 aware, since March we have been asking for supplemental
15 contentions, and we don't believe that we're still on notice of
16 their infringement contentions, and that's what interrogatory
17 number two involves.

18 With respect to interrogatory number one, we did
19 receive a response -- I'm working off of the Appendix A -- that
20 Alacritech submitted, and so there is a response, but the key
21 facts that Alacritech needs to put forth to prove willful
22 infringement, inducement, contributory infringement, are
23 lacking in this response, even though it is called for and
24 should be in their possession.

25 For example, the second paragraph refers to

1 representative patents in the portfolio, Alacritech's patent
2 portfolio, network acceleration technologies. Then on the
3 right side, Alacritech's patent portfolio. They need to define
4 what Alacritech's patent portfolio is.

5 Is it the Patents-in-Suit? Are there other patents?
6 Doing a PTAB search, there's over 40 or 50 patents in
7 Alacritech's name. I'm not entirely sure how wide the
8 portfolio is. I don't know what they mean by patent portfolio.

9 And given that this is relevant to damages, because
10 if they offered Cavium a license for their patent portfolio and
11 there was a number given, then that would certainly be relevant
12 to this litigation. The -- the -- the specific patents are
13 clearly relevant as well, and yet it's not in the response.
14 And then there's a vague reference to network acceleration
15 technologies. Not sure what that means.

16 Then right down here, the very last paragraph of page
17 one, says -- has a reference to evidence of infringement, and
18 then when we turn the page, it's double sided, so -- there's
19 references to still reviewing the three patents, Alacritech's
20 portfolio, accused of infringing, RSC, LSO. I'd like to call
21 those acronyms alphabet soup because there is a lot of them.

22 And then there's a reference to Mr. Hein offered to
23 provide Cavium with an NDA that would allow Alacritech to share
24 its licensing terms and complete infringement analysis with
25 Cavium.

1 Okay. Well, you accuse Cavium of infringement? Did
2 you provide infringement analysis? What was shared? Because
3 pause obviously if they didn't make a charge of infringement
4 against Cavium, well, then their willfulness, their inducement,
5 and their contributory infringement claims may fail.

6 So all that we're asking for is more facts that were
7 called for by the interrogatory and that are pertinent that it
8 appears that Alacritech is attempting to avoid.

9 THE COURT: Well, Ms. Khachatourian, is that
10 interrogatory response merely describing the documents that are
11 attached to it or is it talking about things that are not
12 evidenced in the documents?

13 MS. KHACHATOURIAN: Your Honor, Alacritech did not
14 attach any documents to its response. There are a few, I
15 believe, that are attached by Bates number.

16 But ultimately these issues of charge of infringement
17 and the licensing terms and the -- I guess the number of
18 patents in the portfolio may be on the priv log because there
19 are documents that Alacritech is alleging as privileged. How,
20 I'm not sure, and this may come before Your Honor.

21 But the answer to your question is we believe no.
22 The answers to these questions are not in the documents that we
23 have had access to and have been provided.

24 THE COURT: All right.

25 MS. KHACHATOURIAN: Not fully. So all we're asking

1 for is additional information, and their response is, well,
2 you're going to be taking Mr. Hein's deposition, so why don't
3 you take the deposition and then we'll supplement, which I find
4 rather curious because when it comes to Cavium's responses to
5 interrogatories and information that we need or when we say,
6 well, actually that's more appropriate for deposition,
7 Alacritech turns around and says, no, we want written fulsome
8 responses.

9 So we would like additional facts to the extent they
10 have them that are relevant to the claims that they've asserted
11 against my client in terms of what patents were part of the
12 portfolio, did you make a charge of infringement, what patents
13 did you talk about, what products of Cavium's did you discuss.
14 None of that is in the response.

15 Now, we could ask Mr. Hein these questions, but a
16 preview is I think they're going to object and instruct not to
17 answer based on privilege, and if that's the case, then I would
18 like to know that now. If that's not the case, then I would
19 like the information before the deposition.

20 THE COURT: All right. And have you attached the
21 interrogatory and response to your motion? I know there are
22 limits on how much you can do, but I just would like to have
23 them in front of me.

24 MS. KHACHATOURIAN: Your Honor, Appendix A, which
25 Alacritech filed in opposition to our motion, is a true excerpt

1 of their response, and we provided a true and full excerpt of
2 the actual interrogatories and the definitions in -- as an
3 attachment to our motion to compel.

4 THE COURT: All right. I see there an appendix.
5 You're saying that is the response?

6 MS. KHACHATOURIAN: Yes, Your Honor. The appendix is
7 an accurate representation of the response.

8 THE COURT: So I can get the interrogatory from your
9 motion and that response.

10 MS. KHACHATOURIAN: Correct.

11 THE COURT: All right.

12 MS. KHACHATOURIAN: I can check to see if I have the
13 identity here and I can check to see if I have a full copy of
14 it.

15 THE COURT: I think I can work from this. It's just
16 helpful when I'm listening to arguments to have them in front
17 of me. All right.

18 MS. KHACHATOURIAN: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. PAUNOVICH: Your Honor, regarding this
21 interrogatory, I almost feel like we're talking about a
22 different interrogatory response because I think if Your Honor
23 reviews our complete response, what you'll see is that we've
24 provided an extremely fulsome and detailed response of all the
25 information currently in Alacritech's possession, custody, and

1 control.

2 What counsel pointed to and takes issue with, if you
3 look at the specific paragraphs, for example, they take issue
4 with, for example, this paragraph that talks about the parties,
5 and the parties are referring to a third party, Mr. Andrew Hein
6 and an employee of Cavium Mr. Albert Harnois conducting a
7 telephone conference.

8 I don't have Mr. Hein's personal conversations, much
9 less Mr. Harnois, their employee's personal conversations in my
10 possession, custody, and control. Both individuals have been
11 noticed for deposition, will have their depositions taken.

12 The suggestion that we have claimed privilege over
13 any of this material is entirely false. We have identified
14 every single communication between these individuals, who are
15 the only two individuals who have had these discussions, in our
16 interrogatory response and produced them.

17 There's absolutely nothing that I'm aware of on our
18 privilege log, nor would there be a reason to claim on our
19 privilege log that a communication between a third party that's
20 not Alacritech and a representative of Cavium is privileged,
21 nor would we instruct a witness at deposition who had a
22 conversation between third parties to not answer based on
23 privilege.

24 So we have -- and Your Honor hit the nail on the
25 head. What we've described in a very fulsome, detailed

1 response is -- describes exactly what is available and cited to
2 and produced in the Bates numbers identified in our
3 interrogatory response.

4 This includes the presentation that Mr. Hein
5 apparently gave to Mr. Harnois. It includes the identification
6 of patents, including those that are in suit. It includes
7 other topics of their conversation of everything that we have
8 in our possession, custody, or control.

9 And if Your Honor wants even to see even a further
10 contrast of this, you would have to go no farther than Cavium's
11 response to our common interrogatory number eight. Whereas we
12 provided five pages of detail cited documents of everything
13 that we could find, they have about a paragraph describing
14 these very same events. They supplemented it once. It's a
15 very short description. It's probably a quarter of the size of
16 that description that we have provided based on the very same
17 document.

18 So we -- we have done everything that we can possibly
19 do in this instance. What they're demanding is, in essence,
20 that we state some sort of legal conclusion in this, that we
21 have to take a position before either of the two relevant
22 parties have been deposed as to exactly what was said in that
23 conversation. I don't know what more we could do in advance of
24 the depositions that are going to occur in the next few weeks.

25 THE COURT: Is it your understanding that when Mr.

1 Hein referred to Alacritech's patent portfolio that he was
2 referring to it in that manner, or is there some additional
3 specificity about what patents were being talked about?

4 MR. PAUNOVICH: Sure. So in our -- in our response,
5 we identify a presentation which is an attachment or referred
6 to in the emails that he exchanges with Mr. Harnois, so that --
7 that's a presentation we can all look at with our -- with our
8 own two eyes, and you see patents identified, and you see
9 the -- in that presentation you see the presentation referring
10 broadly to the portfolio.

11 There is then subsequent communications, emails
12 between them that we do have in our possession. We identified
13 and described them. Then we identify specific Patents-in-Suit
14 and specific technologies that they're relevant to, what
15 counsel calls alphabet soup, and we all have been functioning
16 with for over a year, very clearly defined functionalities,
17 RSC, LSO, Infiniband. They're spelled out in about black and
18 white in the email with the Patents-in-Suit.

19 THE COURT: So the -- you will rely on those
20 documents which you have already turned over to provide the
21 specificity about which patents were subject to these
22 discussions?

23 MR. PAUNOVICH: That's correct. We've also noticed
24 Mr. Harnois' deposition for early October. We intend to take
25 his deposition and explore these communications further.

1 Cavium's counsel has subpoenaed a third party Mr.
2 Andrew Hein. We've offered dates for him. They asked for
3 additional dates. We've provided those dates. They have not
4 accepted a date yet. They're intending to take his deposition.
5 He's identified on our initial disclosures. He's not an
6 employee of Alacritech.

7 THE COURT: All right. Do you contend that any of
8 these communications constitute a charge of infringement
9 against Cavium?

10 MR. PAUNOVICH: I think that we have spelled that out
11 as best we can from these communications based on as we read
12 them.

13 THE COURT: Can you show me where you address that?

14 MR. PAUNOVICH: Bear with me just one moment, Your
15 Honor.

16 THE COURT: All right.

17 MR. PAUNOVICH: So I've done this rather quick, but
18 it is a fulsome response, Your Honor, so there may be other
19 areas.

20 For example, the part that I've highlighted here
21 talks about during a May 1 call, so this is a verbal
22 conversation that none of us other than Cavium's employee
23 participated in and third party Mr. Hein.

24 And he's asking Cavium about the status of their
25 investigation of Alacritech's portfolio and patented

1 technologies because we have an email from Mr. Harnois back to
2 Mr. Hein saying we're going to investigate these patents, and
3 this is after he's received this original sort of omnibus
4 portfolio presentation.

5 We've alleged and provided here, Mr. Hein reiterated
6 that Cavium should license Alacritech's portfolio, and they
7 discuss certain Alacritech patents. I don't know what those
8 patents are, but it's clear from the emails that they scheduled
9 a call to discuss some of the patents that were in the
10 portfolio.

11 That -- that is clear from the face of the emails,
12 which we've identified in this response, and that he continued
13 to express an interest in that additional section.

14 This is later, a few weeks or months had passed, and
15 then they get down to the specific technologies that are at
16 issue in this case, and, again, it's clear, at least at a high
17 level, from the emails they're talking about RSC, LSO,
18 Infiniband.

19 Mr. Hein we can tell from those emails is talking
20 about them with Mr. Harnois and asking them to take a license.
21 He emails Mr. Harnois, Alacritech patents that they discuss
22 covering these technologies. The email identified two
23 Patents-in-Suit, that's on the face of the email, the '241 and
24 the '699 patent.

25 And in that email, we can also see in black and white

1 he identifies to Mr. Harnois the so-called alphabet soup
2 technologies that are at issue that he needs to take a license
3 to.

4 I can't -- I don't see the words in those emails
5 charge of infringement, but we're going to get to depose
6 Mr. Harnois and we're going to get to depose Mr. Hein, and they
7 can provide further context for these verbal conversations that
8 they clearly had as evidenced by the emails.

9 THE COURT: So is it fair to say that any evidence
10 about a pre-suit charge of infringement would come from Mr.
11 Hein or Mr. Harnois?

12 MR. PAUNOVICH: That's -- that's correct. We -- I
13 think our position is as well that these emails do evidence
14 that they have been put on notice of their infringement and
15 need to take a license vis-a-vis these emails, which is
16 supplemented by their conversations as evidenced by the emails.

17 THE COURT: All right. So it would be in the emails
18 that you have identified by Bates number that have been
19 provided to Cavium or it would be in the oral testimony of
20 these two witnesses?

21 MR. PAUNOVICH: That's correct. And the point I
22 think here, Your Honor, is it's not going to be just a he said,
23 he said situation. This is a situation where we'll have
24 witnesses testifying and corroborating their story or Mr.
25 Hein's story presumably are the emails that were exchanged

1 between them.

2 THE COURT: And is it fair to say that you are at
3 this point taking this position -- and when I say you, I mean
4 the Plaintiff -- that there was in these communications a
5 charge of infringement against Cavium on the asserted patents?

6 MR. PAUNOVICH: That's correct. That would be our
7 position, which is why we have alleged willfulness and induced
8 infringement going back to at least this time.

9 THE COURT: And what about the subject of a monetary
10 offer? Is there any information about a monetary offer that is
11 not in the documents that you've identified in this
12 interrogatory response?

13 MR. PAUNOVICH: So Cavium's response to common
14 interrogatory number eight does allege that there was such a
15 monetary offer. It's nowhere in the emails. It's not
16 corroborated in the emails, and, frankly, I don't believe that
17 that did occur, a monetary offer.

18 There was a demand or an offer to license, as I
19 understand it. There's no evidence of any monetary offer ever
20 being offered, other than -- that I'm aware of, other than
21 Cavium's uncorroborated interrogatory response.

22 THE COURT: All right.

23 MR. PAUNOVICH: Your Honor, would you like me to
24 address the other interrogatory at this point or give counsel
25 you a chance to respond?

1 THE COURT: I would like to take care of this one
2 before we move on to the next one.

3 But tell me what is the relationship between the
4 entity that Mr. Hein worked for A-Tech and Alacritech?

5 MR. PAUNOVICH: At one point in time, certain
6 Alacritech patents -- and there are documents which we produced
7 which evidence all of this, so I don't want to mischaracterize
8 it. Ultimately there's documents that tell this story.

9 But certain Alacritech patents were assigned to
10 A-Tech for a period of time, and Mr. Hein was a member of
11 A-Tech that -- while it owned those patents, and during that
12 time is when he reached out to Mr. Harnois and Cavium to have
13 these conversations that are evidenced in the emails.

14 Sometime after that, the patents were assigned back
15 to Alacritech prior to filing this suit, and A-Tech was
16 dissolved.

17 THE COURT: Is there a common ownership between
18 A-Tech and Alacritech, or was there --

19 MR. PAUNOVICH: You know, I -- I don't know. I don't
20 want to misspeak here without having the documents in front of
21 me. I -- I don't believe so, but, again, this is something I
22 would have to check.

23 I think it was a simple assignment of the patents and
24 there was an agreement embodying that assignment in terms of
25 how -- what was meant by that and the purpose of that at some

1 level, and then it ultimately came back to Alacritech.

2 But during that time, Alacritech continued to exist,
3 and I believe -- and I may be over my skis here, but I don't --
4 I don't believe that, for example, the owners of Alacritech --
5 I don't believe that they were members of A-Tech at that time,
6 but I don't know. I'm just --

7 THE COURT: All right. I will accept the
8 representation in that spirit. That answers my question.
9 Thank you.

10 MR. PAUNOVICH: Thank you, Your Honor.

11 MS. KHACHATOURIAN: Your Honor, I think a little bit
12 of background would be helpful here.

13 First of all, Quinn Emanuel represents Andrew Hein.
14 They are Andrew Hein's attorneys. Therefore, they have access
15 to Andrew Hein, and they have access to his notes. They have
16 access to speak to him. They have access to ask him questions
17 to respond to this interrogatory for him.

18 THE COURT: The question really isn't about what
19 access Quinn Emanuel has. It's about Alacritech.

20 MS. KHACHATOURIAN: Well, to that second point, this
21 is an interrogatory directed to Alacritech, and they are
22 directing us to a third party who doesn't speak for Alacritech,
23 who apparently is not employed by Alacritech, who was a
24 licensing agent for Alacritech at one time.

25 Therefore, they can disavow his testimony, accept his

1 testimony. They can do whatever they like because he does not
2 speak for the company.

3 Now, in terms of the initial disclosures, after we
4 subpoenaed Andrew Hein in terms of timing, that was probably
5 three weeks to a month ago. They amended their initial
6 disclosure to add Andrew Hein. He was not on their initial
7 disclosures before that.

8 THE COURT: Well, I guess what I want to focus on now
9 is the sufficiency of their interrogatory answer.

10 MS. KHACHATOURIAN: Your Honor, first of all, the
11 emails that they are pointing to we don't believe support what
12 they're saying in terms of there was a charge of infringement,
13 an identification of patents. What might be helpful is our
14 response, so they can be -- you can --

15 THE COURT: Well, the fact that you don't agree with
16 their discovery response is completely predictable.

17 MS. KHACHATOURIAN: True. But what I'm saying is the
18 emails that were produced don't accuse Cavium of infringement.

19 THE COURT: Okay.

20 MS. KHACHATOURIAN: Don't identify what the patent
21 portfolio is.

22 In other words, as Alacritech has said, if these --
23 if these facts were verbal, then you need -- and you're relying
24 on Mr. Hein, then you need to ask him these questions and
25 provide us with a response or say you don't have it in your

1 possession.

2 But then if you don't have it in your possession,
3 then that's a little tricky, isn't it? Then why did you sue us
4 for willful infringement, why did you sue us for inducement,
5 why did you sue us for contributory infringement if now the
6 information is with a third party and not you and you can't
7 answer it?

8 You heard Mr. Paunovich say we don't know. You'll
9 find out in deposition. That's not good enough when we're
10 talking about a party rog and you're pointing me to a third
11 party.

12 You need to know did you accuse Cavium of
13 infringement of the Patents-in-Suit, did you offer to license
14 the patents and what was the monetary amount, in the PowerPoint
15 is there any reference to infringement? I would submit to Your
16 Honor no.

17 Is there a discussion of all the Patents-in-Suit?
18 No. And, in fact, Alacritech even says they have information
19 of infringement, and if there was an NDA, they would share it,
20 which presumes that they never did.

21 And, by the way, on the privilege log, there are
22 documents being withheld under a common interest, which we're
23 probably going to attack.

24 This is a person Mr. Hein who -- who was a licensing
25 agent, and what happened was -- is Alacritech transferred these

1 patents, whatever those patents are, because we still haven't
2 had them fully identified, to A-Tech.

3 A-Tech was their licensing agent. There's an
4 agreement between them. There is a financial arrangement
5 between them, and then A-Tech was supposed to go out, I guess,
6 and monetize the patents and charge people with infringement on
7 Alacritech's behalf.

8 We're asking basic questions. What are the patents,
9 did you make a monetary offer. If the answer is no, say so.
10 But what they're doing is they're voiding the key facts, and
11 they're hoping that A-Tech will just fill it in when I depose
12 Mr. Hein.

13 I want these answers up front so that people can't
14 change their stories because I'm asking for an answer from
15 Alacritech, not from A-Tech. What did you do?

16 THE COURT: I think the key at this point in
17 discovery is have they disclosed to you the documents and
18 information that they have.

19 And in looking at this discovery response, I think
20 that it adequately discloses to you, based on the
21 representations that I've heard here, all the documents they
22 had that bear on it and the identity of the witnesses.

23 The witnesses are not, as far as I can determine,
24 their employees, and I -- so I -- I don't think this is a
25 situation where they're saying we have the information, you

1 need to come and get it. I'm satisfied based on what I've
2 heard that they've given you an adequate accounting of the
3 evidence that they have on this.

4 I understand that whether or not these communications
5 amount to a charge of infringement may be a summary judgment
6 matter. I don't know. But unless the Plaintiff relies upon
7 information beyond that which is set out in the interrogatory
8 response, I don't think they have violated their discovery
9 obligation.

10 MS. KHACHATOURIAN: Then, Your Honor, what I would
11 say is that they have represented in their opposition to our
12 motion to compel that they're going to supplement this response
13 after Andrew Hein's deposition, and what I would ask then is
14 that they are not permitted to do that.

15 Either you provide us the information in response to
16 this interrogatory and live with it, or you can't supplement
17 after his deposition because you're basically saying you've
18 provided all of the information that you have. Okay. Fine.
19 But then you can't then say, well, after Andrew Hein gets
20 deposed, I'm going to supplement and add more. That's not
21 fair.

22 Either he's in your possession, custody, or control,
23 or he's not. If you're saying that he's not, then you can't
24 provide that information later, and if you're saying that he
25 is, then provide it.

1 THE COURT: If they're saying that he's not, then
2 they don't currently have the information. After his
3 deposition, they will have the information. It will be in the
4 deposition, so I don't think that's inconsistent.

5 Now, if you determine during the deposition that they
6 have had -- that their relationship with Mr. Hein is such that
7 this is knowledge and information that they should be charged
8 with, then there may be a different issue.

9 MS. KHACHATOURIAN: Okay, Your Honor. Then that's
10 what we'll plan to do because as we see it, he, Andrew Hein,
11 was Alacritech's licensing agent, and they have a contractual
12 agreement.

13 Quinn Emanuel represents Andrew Hein, so I think on
14 its face it appears difficult to then claim that Andrew Hein is
15 not in their possession, custody, or control. I don't think
16 it's any coincidence that Quinn Emanuel is representing Andrew
17 Hein.

18 THE COURT: Well, I'm not going to draw any
19 inferences from the fact of representation, but I hear you.

20 With respect to the second interrogatory, what was --

21 MS. KHACHATOURIAN: The second interrogatory
22 essentially asks for more information about their infringement
23 contentions, and since we've gotten supplemental contentions, I
24 think that should be carried over as well.

25 THE COURT: All right. Well, I -- frankly, I think

1 that the contentions are an adequate answer to that, and if you
2 have a problem with the contentions, I think you should raise
3 it in the context of the contentions, but I'll take those
4 contentions as an adequate answer to the second interrogatory.

5 MS. KHACHATOURIAN: Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 Let's see. We have then Alacritech's motion to
8 compel. Mr. Stern?

9 MR. STERN: Good morning, Your Honor.

10 Mr. Paunovich will handle the bulk of this motion,
11 but I'm going to start it off, if that's all right with Your
12 Honor.

13 THE COURT: All right.

14 MR. STERN: I want to -- if I'm going to be
15 addressing anything, Your Honor, I think it's more of the
16 tonality of our motion and it's the -- what I think is the
17 difficulty that brings us here.

18 I want to pocus on, if I can, the motion to compel
19 with respect to common interrogatory number seven and with
20 respect to party interrogatory one and four, and I didn't know
21 if you have those in front of you, Your Honor. We have
22 attached them to our motion, but I want to make sure you have
23 them before you. We have copies of them here if that would be
24 most helpful to you.

25 THE COURT: If you have paper copies, I would be

1 happy to --

2 MR. STERN: Your Honor, what I'm going to ask
3 Mr. Paunovich to do, if he has permission to approach, we will
4 provide Your Honor the following: These are the two documents
5 which are most recent copies. One is the second supplemental
6 response to Plaintiff's first set of common interrogatories,
7 and then also Cavium's response to Plaintiff's first set of
8 party interrogatories.

9 So you're going to get their second supplement to the
10 common and their first response to the party, which is the
11 latest versions that we have.

12 THE COURT: All right.

13 MR. STERN: Does Your Honor have those?

14 THE COURT: I do.

15 MR. STERN: So just by way of background, this has
16 been a long fought battle to try to get information, which we
17 should have gotten months ago.

18 Cavium, as you know, voluntarily, deliberately,
19 consciously interceded into this case. They decided to
20 intervene in the case.

21 In February, seven months ago, we served on them the
22 common interrogatories, actually seven months ago to the day.
23 On June 1st, which is now two and a half months ago, we served
24 them the party interrogatories.

25 So I give this as background, Your Honor. These

1 people have had between two and a half and seven months to
2 respond to the questions that we've provided. There's no
3 question about burdensome or difficulty of having the time to
4 respond to them.

5 Now, the questions -- what we're asking for them to
6 do is our client has, through its own diligence, discovered
7 certain products that it believes are infringing, but there
8 were a variety of products, and obviously right now, you, Your
9 Honor, or any person would be able to find out only certain
10 limited information about what any parties' products are based
11 on conventional tools, like the internet, for example.

12 What these interrogatories seek to do is to find out
13 additional information about additional products that practice
14 what we believe are the functions that ultimately are the heart
15 of this case.

16 In interrogatory seven of the common interrogatories,
17 Your Honor -- and I don't know if you have that in front of
18 you.

19 THE COURT: I do.

20 MR. STERN: This was the subject of the motion that
21 was heard before you on June 15th, and here is a -- here is
22 that -- here is that interrogatory, and in that interrogatory,
23 we asked for Cavium to identify each product or combination of
24 products that you make -- have made used in connection with any
25 services, support, operations, or facilities that you provide

1 with or using accused instrumentalities, practicing, and/or
2 supporting, infringing RSC, LSO functionality or Infiniband
3 and/or RoCE or RoCE2 compliant connectivity functionality, et
4 cetera.

5 That's what we asked them to do because we only have
6 certain products, so we want to know from the very gate, from
7 the moment that they came into the case, what are the other
8 products that you have that we don't know about that practice
9 these functionalities.

10 Now, on June 15th, Your Honor, we were here, and
11 Cavium's counsel made the argument that the reason they
12 couldn't answer this is because answering this interrogatory
13 would be an implicit admission of infringement.

14 And the reason that they were taking that position
15 was because this interrogatory used the word, used the phrase,
16 as Your Honor sees right here, infringing RSC, if Your Honor
17 sees that.

18 At that hearing on June 15th, I made a statement on
19 the record, which I think, I hope, with Your Honor carries some
20 weight, and I made the following statement. After -- after
21 Cavium's counsel made that comment, I made the following
22 statement, which I think everyone could represent is
23 unequivocal. It's on page 135 of the transcript of the
24 June 15th hearing.

25 I said, I will do, Your Honor, in an effort to try to

1 resolve that, we'll strike the word infringing. We will
2 consider that to be stricken. I said that on the record. I
3 didn't say we have to talk about it later on. I didn't say,
4 you know, there's some sort of qualification. I said it's
5 stricken, consider it stricken. So on June 15th, the world had
6 notice that for that interrogatory, for interrogatory number
7 seven, that word was stricken infringing.

8 Now, after that date, after June 15th -- I should say
9 before I go to that, ignoring interrogatory number seven, even
10 ignoring interrogatory seven, as of June 1st, we had served on
11 them the party interrogatories. These are unique to Cavium.

12 Now, Your Honor, obviously on June 15th, that was too
13 early to have any response from Cavium to those
14 interrogatories, so we didn't have a response to their
15 interrogatories.

16 But I want to show you, Your Honor, if I can -- and
17 I'm directing Your Honor to the party interrogatories. I'm
18 going to give you some examples. We've moved them on one and
19 four, but I'd like to focus on interrogatory four.

20 Interrogatory four, which is in front of you, Your
21 Honor, says identify name, model number, and any unique
22 identifiers, all Cavium products or services that were made,
23 used, imported, offered for sale and/or sold, from June 2010 to
24 the present that support, practice, or enable the identified
25 functionalities, and it goes on. I want to stop there because

1 we asked for all sorts of other things as well, but I want to
2 just focus on that.

3 Now, the phrase identified functionalities, Your
4 Honor, is a defined phrase, and everyone can admit that the
5 definition of identified functionalities doesn't include the
6 word infringing. The identified functionalities are things
7 like the LSO, the RSC, the RoCE, the RoCE2, the Infiniband.
8 Those were all defined that way.

9 Now, I say this because I want to make clear to Your
10 Honor that what we tried in the party interrogatories -- I'm
11 sorry -- in the common interrogatories, we had already said on
12 June 15th infringing is stricken, tell us all the products that
13 practice these functionalities.

14 In the -- in the party ones on June 1, we didn't have
15 any such problem with respect to the word infringing, or I say
16 alleged problem. They similarly said identify these products
17 that perform these functions.

18 Now, I think it's telling, Your Honor, about this.
19 In response to interrogatory number seven, one of the
20 objections that was made by Cavium -- this is the word used in
21 the infringing. They made the following objection: Cavium --
22 I'll put it here, Your Honor. They said Cavium objects to the
23 interrogatory to the extent it assumes facts not in evidence,
24 including without limitation with regard to alleged
25 infringement.

1 In other words, they -- they preserved an objection
2 that, you know, they have a problem with interrogatory number
3 seven because it uses the word infringement in it, but, of
4 course, that was cleaned on June 15th. That was gone on
5 June 15th.

6 If Your Honor looks at Cavium's responses to
7 interrogatories one and four of the party interrogatories, Your
8 Honor will find that there is no such -- there is no such
9 objection made. Here's, for example, the response to
10 interrogatory number four, which I have.

11 They said -- excuse me, Your Honor. They say
12 everything -- they have all sorts of problems with this, and
13 this is the totality of the problem they have on accused
14 instrumentalities. It's in front of Your Honor right there.

15 They say they dump accused instrumentalities in with
16 a bunch of other language. And they say Cavium further objects
17 to this interrogatory on the grounds that the accused
18 instruments, identified functionalities, Cavium products, terms
19 of each relevant sale or offer to sale, and unique identifiers
20 are vague, ambiguous, and overly broad, substantively and
21 temporally, and to the extent they seek information not in
22 Cavium's possession, custody, or control. They don't say
23 anything about a problem with these things suggesting or
24 assuming infringement.

25 Now, we have been pushing on Cavium to produce to us

1 these interrogatories -- to identify these products which
2 practice these various different features, the identified
3 functionalities. It's been more than two and a half months.
4 Discovery ends in a month, Your Honor. Discovery ends in a
5 month.

6 Cavium has gone out of its way to do whatever it can
7 to simply avoid this, and I think what's remarkable is the
8 positions they've taken here before Your Honor. This is what
9 they've told Your Honor.

10 First they told Your Honor that this problem still
11 persists. I -- I'm not making this up. They say -- this is
12 their motion. This is their opposition to this motion. They
13 say -- this is on page four of their opposition to our motion.
14 It says -- I don't know if Your Honor can read this.

15 It says, however -- bottom of the page, very bottom
16 of the page on page four -- any supplement must be subject to
17 correction as to the defects of the interrogatories' use of
18 infringe, which infects each interrogatory at issue, numbers
19 three, five and seven, those are of the common, and numbers one
20 and two, these are the accused instrumentalities.

21 What's remarkable about this, Judge, is, first of
22 all, it ignores the complete fact that we told Your Honor on
23 the record that we told them that the word infringing is
24 stricken. We told them on the record.

25 But, Your Honor, it's more than that. We didn't just

1 sit on our hands after that hearing. Your Honor -- does the
2 Court have this document? Your Honor, I'd like you to see this
3 letter. This was a letter that was sent on September 7th,
4 which recounts what we went through on this particular issue,
5 if I may.

6 THE COURT: All right.

7 MR. STERN: Now, this is written on September 7th,
8 Your Honor. This is almost three months after my statement on
9 the record that the word infringing is stricken. This is what
10 we have to tell them because they are persistently saying you
11 still have a problem with the word infringing.

12 I think it's important that what we do is we write
13 them a letter. This is written by my partner -- I'm sorry --
14 by my -- by my colleague Brian Dunn, and in this, we first
15 start off in writing by confirming what the content of seven is
16 without the word interrogatory -- without number seven --
17 without the word infringing.

18 I don't know what just happened here. You have it in
19 front of you. This is -- if you see the word infringing, do
20 you see that interlineated on the first page?

21 THE COURT: I see it.

22 MR. STERN: So we emphasized it to them. We've
23 already done this. But more to the point, Your Honor, if Your
24 Honor turns the page and Your Honor sees at the top is my
25 statement on the open record on June 15th.

1 On July 16th, a month after I made that statement to
2 Your Honor on the record, a month after that, two months ago
3 today, we wrote them an email that says -- and if I can read
4 it, it says, as we have clarified on several occasions now, we
5 are only seeking identification of all products that Cavium has
6 sold, supplied, used, made, or imported during the relevant
7 time period that provide, implement, or support the relevant
8 functionalities, that is, send side coalescing known as LSO,
9 GSC, et cetera, receive side coalescing, often known as RSC,
10 LSO, et cetera, or RoCE, Infiniband functionalities.

11 We have also told you multiple times that we
12 understand that by identifying such products, Cavium does not
13 admit that they are infringing. It goes on and continues, it
14 says, in this motion that we filed, we have made that
15 representation.

16 But, Your Honor, it doesn't really make a difference
17 what we tell Cavium in writing. It doesn't make a difference
18 what we tell Your Honor. Their position is we're simply not
19 going to produce the information, and what we're going to do is
20 we're going to wreak havoc, we're going to hang our hat on the
21 use of this word infringing in an interrogatory which has been
22 formally -- the word has formally been stricken on the record.
23 That's point number one.

24 Point number two, with respect to the rogs one and
25 four of the party interrogatories, there is no use of the word

1 infringing. So what do they do? Your Honor, they make up a
2 new excuse, and here's the latest excuse.

3 The latest excuse is, you know what? Infringing may
4 not be used in interrogatory one and four, but the word
5 infringing is used in the phrase accused functionalities --
6 accused instrumentalities. That's what they say. That's the
7 new argument.

8 Well, a couple of points in response to that. I
9 pointed out, Your Honor, that when they made objections to
10 interrogatories one and four, they never asserted this
11 objection. Nowhere did they assert this objection.

12 Now, it's Fifth Circuit law, I can get a citation to
13 Your Honor. In Re United States 864 Fed 2nd 1153 at 1156,
14 quote, We readily agree with the District Court that as a
15 general rule when a party fails to object timely to
16 interrogatories, production request, or other discovery
17 efforts, objections, therefore, are waived.

18 This latest concoction that accused instrumentalities
19 is subject to a problem because they use the word infringing,
20 they didn't -- they never told you that on June 15th. They
21 didn't say that to you on June 15th. They haven't put that in
22 their objections to answers to interrogatories. They made that
23 up so that they can continue this onslaught.

24 But here what's really remarkable, Your Honor, is
25 that the portion I read of the interrogatory number four, party

1 interrogatory number four, party interrogatory four, the
2 portion I read doesn't use the word accused instrumentalities.
3 It used the phrase identified functionalities, and, Your Honor,
4 identified functionalities doesn't use the word infringing.

5 So -- but what we're facing here is this problem: Is
6 they simply do not want to do what we have asked them to do now
7 for seven months, is identify the products of which we're
8 unaware that practices these identified functionalities.

9 And the proof of that, the proof that they -- what
10 they are doing here is an email chain -- the proof of what's
11 really going on here is reflected in an email chain that is now
12 three days old.

13 In an attempt to resolve this, we made abundantly
14 clear the word infringing is gone. It's gone, it's gone, it's
15 gone. There's no basis not to do it, and this is what he got
16 back.

17 Now, of course, this is an email chain that starts at
18 the back. We have -- it actually starts with an email from
19 Cavium's counsel. No, it actually starts with -- I'm sorry --
20 with an email from Mr. Dunn, -- I'm sorry -- which says, please
21 see the attached correspondence regarding Cavium's false
22 assertion of Alacritech's interrogatory use the word
23 infringing, and that's at the very last -- that's the last
24 page.

25 If you turn to the next two pages, you see the

1 response from Cavium's counsel. And in that response, Cavium
2 says -- they take the position that the word infringing is
3 still in the interrogatory.

4 But I want -- if -- I want Your Honor to look at
5 the -- if I could, this portion of their answer. It's on page
6 six of this document. Directing your attention to the very
7 bottom. Do you see the paragraph that says nonetheless?

8 THE COURT: I do.

9 MR. STERN: After telling us that the word infringing
10 is still in the interrogatory, which is categorically,
11 unqualified false with respect to party interrogatories one and
12 four, they say this: -- and, of course, ignores what happened
13 on June 15th. They say this: Nonetheless, in the spirit of
14 cooperation, it is our understanding that Alacritech has
15 accused the 5709 product against Dell. While Alacritech has
16 never accused the 5709 product against Cavium, it is our
17 understanding that the 5709 was sold by QLogic to Dell.
18 Therefore, we are amenable, subject to our objections, to amend
19 our response to interrogatory number seven to include the
20 accused product 5709.

21 Now, Your Honor, we're seeing what's going on here.
22 I'll tell you what's going on here, Your Honor. Their answers
23 to interrogatories one and four and answer to interrogatory
24 seven are being held hostage. We're essentially being
25 extorted.

1 We're being told, look, here's the deal. We will
2 agree to identify one product, and if you -- if we identify
3 this one additional product, which you have not accused of
4 ours, then we'll consider the entire interrogatory one and four
5 of the party interrogatories and interrogatory seven of the
6 common interrogatories resolved, which means a couple of
7 things.

8 They know exactly what we're looking for. The
9 argument that they don't know what we're looking for -- by the
10 way, in this motion in their opposition, they make the unholy
11 argument in their opposition to our motion that they don't even
12 understand what LSO is, what RSC is, that these terms are terms
13 that they're really not historically acquainted with.

14 What we really need, Your Honor, is an order from
15 Your Honor telling Cavium that they are to post-haste identify
16 all documents and provide all other information requested in
17 common interrogatory number seven and in party interrogatories
18 number one and four.

19 And, Your Honor, you know, I know -- I know Your
20 Honor likes to see the parties try to work these sorts of
21 situations out. We can't. It's -- it's four weeks to the end
22 of the race on discovery. We've been waiting for this stuff
23 for months. Other Defendants have produced this information to
24 us. Cavium is the party that is simply resisting and refusing
25 to provide this sort of information.

1 With that, Your Honor, I'm going to turn this over to
2 my -- my colleague Mr. Paunovich to address the rest of the
3 motion.

4 THE COURT: All right.

5 MR. PAUNOVICH: Just to -- just to add a small amount
6 of detail on this issue and then there's a few issues in our
7 motion.

8 But, for example, Your Honor, continuing to what
9 Mr. Stern said, we are -- we have become aware through
10 discovery and further diligence, for example, of new products
11 that Cavium just released, for example, in June of this year,
12 documents that have just appeared within the last two months on
13 the internet that they have not produced in the case, have not
14 identified, for example, the 41000 series of products, any
15 models, all of these.

16 It's very clear from those very recent documents that
17 have now popped up on the internet that these products use the
18 very acronyms that they say they don't understand, LSO, RSC,
19 Infiniband, RoCE. We included those. There's no hiding the
20 ball in our infringement contentions that we served. There are
21 new products. They've not identified them.

22 There's other products as well. There's the 5709,
23 which they mention in their email correspondence, as well as
24 the 5708 series, the 5716 series. And all -- there's
25 numerous -- as we understand it, there's perhaps multiple

1 versions of these products that -- with different nomenclature.

2 You know, we just don't know because they've refused
3 and it's not opaque. It's not like with Intel where they have
4 Intel.ark that you can go to and look up every product.

5 THE COURT: Mr. Paunovich, why don't you address
6 first interrogatory number one, the response they provided, and
7 tell me where it is lacking.

8 MR. PAUNOVICH: Sure. Interrogatory response number
9 one, what they have told us over and over again is that they've
10 complied with it because they basically take the information
11 that's already in our contentions and they parrot it back to
12 us.

13 So they said, great, you found these products X, Y,
14 and Z, and I see them in your contentions, so I'm going to
15 respond to interrogatory one by just providing a list of X, Y,
16 and Z that's in your contentions, but that's not what we're
17 asking for. We're asking for what we don't know.

18 THE COURT: Where in their response do they limit it
19 in that fashion? That's what I'm looking for is what you find
20 objectionable in their response. I've got it in front of me
21 now.

22 MR. PAUNOVICH: So, of course, Your Honor, they don't
23 say it in that interrogatory. This is through months of meet
24 and confer that we've had to draw this information out.

25 What I would demonstrate to the Court is if you look

1 at that interrogatory, what you won't find is the 5709 product
2 series. What you won't find is the 5708 product series. What
3 you won't find is the 5716 series. Nowhere are these
4 identified. You won't find are the 41000 product series and
5 any models within these series.

6 We now have those in your contentions. We should
7 have gotten the information about that months ago in our first
8 motion to compel and in response to these interrogatories. We
9 don't know what else doesn't exist even beyond those.

10 THE COURT: All right. Well, so what I'm hearing is
11 that this is a categorical response, but you claim it is
12 complete.

13 MR. PAUNOVICH: That -- that we can demonstratively
14 show it is incomplete because they have other product series
15 models that we see from their data sheets have these
16 functionalities.

17 And at meet and confers they've told us we didn't go
18 back to identify the things that we know about that you don't
19 know because it's not public. Instead, we identified the
20 products that you, Alacritech, identified in your infringement
21 contentions.

22 But that's not what we're seeking. We're seeking to
23 know what we can't know, what is non-public.

24 THE COURT: Well, so there is no improper objection
25 that they're relying upon or some other limitation to their

1 response. You're saying that it is just factually incorrect.

2 MR. PAUNOVICH: Well, it's exactly what Mr. Stern
3 went over, and he deferred to me on the product names and
4 models numbers, but the -- the basis of their refusal to
5 provide this additional identification of models --

6 THE COURT: Well, where -- where is that refusal
7 shown in their response?

8 MR. PAUNOVICH: I mean, it's from the June 15th
9 hearing when they -- they've said they can only identify those
10 products in our contentions because in their view the
11 interrogatory includes the word infringing. And so they will
12 only identify, as they represented to the Court, those products
13 which we identified in our contentions, so it's a sort of
14 chicken before the egg.

15 THE COURT: Does this answer, this response, say that
16 they are only identifying what is set out in Plaintiff's
17 contentions?

18 MR. PAUNOVICH: It does not. That has come out
19 through meet and confers and then was discussed and briefed
20 extensively in the first motion to the Court, 264, which was
21 then the subject of extensive argument at the June 15th hearing
22 and is then teed up and evidenced by the attachments that are
23 part of the instant motion on this issue.

24 THE COURT: All right. Point me to that part of your
25 motion that identifies the evidence you have that there are

1 other responsive products that have not been identified in this
2 interrogatory answer.

3 MR. PAUNOVICH: As an example -- if I may, Your
4 Honor, I know you asked for the motion. Because we had so many
5 issues that we're taking up, it's not detailed in the motion.

6 We have, for example, the email communication, the
7 string which Mr. Stern just went over with you. And in that,
8 on page six, Ms. Khachatourian acknowledges that, for example,
9 the 5709 is not in their interrogatory response.

10 They know that it's an infringing product, that it
11 has the identified functionalities. They know that we've now
12 accused Dell of infringing that and them in our contentions
13 because we had to discover this in a round about way. In
14 addition, they say that may hold true for the 5708 and the
15 5716. We're still investigating.

16 Subsequent to filing our motion, we also learned of
17 this 4100 series of products which were just recently released.
18 Their data sheets indicate very clearly that they provide LSO,
19 Infiniband, RoCE and functionality.

20 THE COURT: Is there any evidence you have on that or
21 is it --

22 MR. PAUNOVICH: I have some slides that I can pull up
23 if I could hook in my computer here. I actually do have some
24 data sheets that we've been able to pull down from the internet
25 on that series as an example.

1 THE COURT: Well, I -- Mr. Paunovich, I need
2 something to rely upon other than the argument that you're
3 offering that these responses are incomplete, and if there's
4 nothing from the Plaintiff -- I mean, from the Defendant
5 relying on some limitation, all I have is at this point your
6 representation that there are other responsive products.

7 I see what you've said about 5709 being mentioned in
8 that, and I can get a response to that. What evidence do you
9 have on this 4100 series?

10 MR. PAUNOVICH: If I may, Your Honor, as I said,
11 there are some slides which we have and I'm going to -- if I
12 can, is there a cord that I can plug in and display? Right
13 there. Perfect.

14 THE COURT: Okay. I guess for the record it's 41000.

15 MR. PAUNOVICH: Correct. So -- and that is a --
16 refers to a series of products.

17 So as you can see here, Your Honor, this is a recent
18 publication by Cavium, June 27th, 2017, they released the Fast
19 Link 4100 series of products, which we understand refers to
20 multiple product model numbers. It's a series.

21 This document was not produced in the litigation.
22 They released a users guide associated with that.

23 THE COURT: Have you put the Defendant on notice of
24 your contention that this 41000 series of products is accused?

25 MR. PAUNOVICH: Yes. That's part of our contentions,

1 and these, among others, were discussed during the meet and
2 confers on this subject.

3 The -- the issue has and always been their contention
4 that our interrogatories call for a, quote, infringing product,
5 which Mr. Stern, I hope, has dispelled the Court of any notion
6 that that is included.

7 THE COURT: I understand that. What I haven't seen
8 is a real reliance upon that, and that's what I'm looking for,
9 is some indication that discovery has been withheld on that
10 basis.

11 MR. PAUNOVICH: So we will flip through the hearing
12 transcript from June 15th. I think that will more than
13 elucidate their reliance on that. That, as I understand it --
14 and I don't want to misquote it -- but was the very clear basis
15 that they represented to the Court why they couldn't respond to
16 either interrogatory number one.

17 And in their motion papers, as Mr. Stern just put up,
18 their opposition to this motion, they've said the reason that
19 they can't respond is because the word infringing infects all
20 of these.

21 THE COURT: They have responded; right?

22 MR. PAUNOVICH: They've only responded to identify
23 what they claim are infringing functionalities, i.e. the ones
24 that are identified in our earlier contentions, or now,
25 apparently, they would only identify those that are in our

1 current contentions. They won't tell us what their historical
2 product offerings are.

3 So this is -- this is an example, the 4100. In
4 addition, for example, I mentioned the 5706, 5708, 5709, 5716.
5 These are products which were purchased as part of a Broadcom
6 set of business acquisitions, and we -- we have come to learn
7 that they have been rebranded.

8 We don't know how or if those have continued to be
9 sold. Those are also -- they're now part of our contentions.
10 They were not identified in response to the interrogatory
11 because of this notion that we hadn't previously accused them
12 of infringing.

13 And -- and, I mean, Ms. Khachatourian will have an
14 opportunity to state for the Court whether or not they have
15 been relying on this word infringing. We would respectfully
16 submit, given their opposition and the representations that
17 they've made in the hearing, that this is the basis -- the sole
18 basis of their reliance on their current response.

19 They have told us -- and I can represent to you as an
20 officer of the Court, Your Honor, because I've had this
21 conversation with Ms. Khachatourian, not only the local, but
22 her and I personally when she first produced financials to us,
23 which is one of our other motion issues and we'll talk about,
24 and I asked her, is this the entire universe of products that
25 have the functionalities which we have accused in this case or

1 is it the -- only those products that we've identified in our
2 contentions.

3 And she told me -- and I'm representing to you as an
4 officer of the Court. You can take may bar license if I was
5 lying -- that it was only those that were in our contentions
6 and that they would not identify any that go beyond that, and
7 as we have learned, there are clearly products that go beyond
8 it.

9 MR. STERN: Your Honor, if I may?

10 THE COURT: All right.

11 MR. STERN: Your Honor asked for -- this is from page
12 131 through 133 of the prior hearing, June 15th hearing before
13 Your Honor. This is after I argued, and this is Ms.
14 Khachatourian. I can put this up if Your Honor wishes to see
15 this.

16 With respect to it, it says -- Your Honor says, What
17 about the products? I mean, what about the identification of
18 products?

19 Ms. Khachatourian says -- this is on page 131, line
20 14. So with respect to the products, I'd like to go to
21 interrogatory number seven.

22 The Court, Yes.

23 Ms. Khachatourian, They didn't ask for identity --
24 I'm reading this. They didn't ask for identified products that
25 are substantially similar. What they asked for is identify all

1 your products -- other -- your other products that infringe.

2 So if you looked at interrogatory number seven and
3 you actually look at the language of it, it says identify each
4 product or combination that you have made -- and Your Honor
5 says try to speak slower. I'm sorry, court reporter, et
6 cetera, et cetera. Supporting infringing RSC and/or LSO
7 functionality.

8 In order for me to respond to this interrogatory
9 based on the way it's drafted I would be admitting
10 infringement.

11 So they are -- at this place in the hearing, Your
12 Honor, she -- she tells Your Honor that -- that the reason they
13 cannot answer this is because they would be admitting
14 infringement.

15 THE COURT: I understand that, and that's an argument
16 against a motion to compel, but what I'm dealing with now is
17 the response. So they clearly have responded, and the question
18 is the sufficiency of that response.

19 But I will hear from Ms. Khachatourian about whether
20 they are relying upon that objection to withhold other
21 responsive information.

22 MS. KHACHATOURIAN: Your Honor, if you would just
23 give me a moment, that was a very long presentation, and I have
24 a lot to say, so I would just like to gather my things.

25 THE COURT: Well, why don't -- we're about due for

1 the morning recess. I'll give you a chance to gather your
2 things and --

3 MS. KHACHATOURIAN: Thank you.

4 THE COURT: -- we'll come back and hear it.

5 MS. KHACHATOURIAN: Thank you, Your Honor.

6 THE COURT: Thank you. We'll take the recess.

7 COURT SECURITY OFFICER: All rise.

8 (Break taken.)

9 COURT SECURITY OFFICER: All rise.

10 THE COURT: Thank you. Please be seated.

11 Ms. Khachatourian?

12 MS. KHACHATOURIAN: Thank you, Your Honor.

13 Let me just cut to it. We did not withhold responses
14 based on the term infringing. A lot was said here today, and I
15 would ask the Court's indulgence in letting me clarify and
16 correct the record because a lot was said today that frankly is
17 not true.

18 So let me start with how we responded to these
19 interrogatories. We responded to these interrogatories based
20 on what we understood their infringement contentions to be at
21 the time, which, by the way, your Court has found with the
22 other Defendants, particularly Intel, to be deficient, and
23 Alacritech knows full well what our issues are with their
24 interrogatories.

25 But the response I get from them time and again in,

1 frankly, very short lead local calls from Mr. Stern, when can I
2 file my motion, can I file my motion, when can I file my
3 motion? That has been the approach to meet and confer in this
4 case.

5 I have never seen those slides they put up there
6 about this 4100. They've never discussed it with me. I
7 haven't spoken to Mr. Paunovich since April. Mr. Stern and I
8 do lead local calls that don't last very long because the
9 response is when can I file my motion?

10 With respect to the emails with Brian Dunn and all
11 the rest of it I'll get to, but just to assure the Court that
12 we did not withhold information because of the term infringing.
13 We responded based on what we understood, and we did the best
14 we could with respect to their infringement theories, and
15 that's how this starts.

16 I think Alacritech has lost sight of the fact that
17 the scope of discovery and what's disclosed is based on your
18 understanding of the infringement theories and whether you have
19 fair notice, and so I'm going to go through that with Your
20 Honor, if you'll indulge me.

21 I don't want to waste too much time on the infringing
22 issue, but Mr. Stern did not read the rest of the transcript
23 that's pertinent here where when he said he would strike
24 infringing to interrogatory number seven, Your Honor looked at
25 me at that hearing, and I shrugged my shoulders because there

1 was far more wrong with the interrogatory at that time.

2 And you directed Mr. Stern to speak with me and try
3 to resolve it, and that conversation never occurred. The Court
4 stated on page 135, right after the portion that Mr. Stern read
5 to Your Honor, okay. Well, go ahead and you can talk with Ms.
6 Khachatourian about how to resolve number seven, but I'll await
7 any further supplemental brief after you've received in two
8 weeks the supplemental responses.

9 Mr. Stern never spoke to me. Instead, we ended up
10 responding to interrogatory seven the way I said we would,
11 which is we don't infringe -- we believe any other products
12 infringe because they didn't engage in that process with us.

13 And what we're being vilified for now is actually
14 providing responses the best we could based on the notice that
15 we had, and now they're trying to use, you know, you didn't
16 have this objection and first party rog and then you had it
17 here and all of this. We responded the best we could based on
18 deficient infringement contentions and what we understood to be
19 the infringement theories here.

20 And with that, I will go to the interrogatories.
21 Your Honor will see in all of their interrogatories that were
22 served prior to the June 15th hearing and shortly thereafter
23 have the same definitions.

24 There's LSO functionality that is defined with other
25 alphabet soup, large segmentation offload, large segment

1 offload, large send offload, TCP segmentation offload, generic
2 segmentation offload, and any reasonably similar technique, and
3 that goes on for all of these accused functionalities.

4 And in the definition of accused instrumentalities,
5 they used the term infringing RSC and LSO functionality, so the
6 accused instrumentalities by definition already infringe the
7 alphabet soup.

8 In the correspondence between me and Mr. Dunn on
9 September 11th, I was trying resolve this, and I said, are you
10 striking infringing from all of the -- the interrogatories?
11 And he said, seven and maybe three, and it's in the email, and
12 I will put it up on the Elmo.

13 But it doesn't matter. As an offer of compromise, I
14 said, well, since I understand that you're accusing this 5709
15 product and apparently these two others that you just slipped
16 in to Dell's infringement contentions, I will amend to include
17 that since you're now contending it infringes. Based on what
18 theories, I don't know because I have two boxes of contentions
19 to look at. But, nonetheless, I'm happy to amend it to include
20 it, and I was told no.

21 THE COURT: Well, let's talk about a specific
22 interrogatory, and what I'd like to find out is whether you
23 answered with respect to your understanding of what RSC and/or
24 LSO functionality, for instance, is or whether you answered
25 with respect to your understanding of their infringement

1 theory.

2 MS. KHACHATOURIAN: Your Honor, it's one and the
3 same. We responded with respect to our understanding of their
4 infringement contentions, but let me explain why they're one
5 and the same.

6 THE COURT: All right.

7 MS. KHACHATOURIAN: So here's some excerpts from the
8 February infringement contentions that we moved to strike, and
9 you'll see in the first chart it says infringing RSC
10 functionality.

11 You'll see that there is no discussion of the patent
12 claims. There's no discussion of tying the patent claims to
13 actually what we do. It just says you fringe because you do
14 infringing RSC functionality, and then there's a --

15 THE COURT: Where is that? I'm not seeing it.

16 MS. KHACHATOURIAN: It's right here. Let me fix it.
17 Do you see that?

18 THE COURT: All right. Okay.

19 MS. KHACHATOURIAN: I'm happy to provide you copies
20 of these, if that will be helpful, but you probably have enough
21 paper, frankly, but if you would like a copy, I'll provide it.

22 So then they define footnote five what RSC
23 functionality is, and, again, it is the definition of the
24 alphabet soup. They don't actually provide definitions of what
25 receive side coalescing, receive segment coalescing, large

1 receive offload. It's just like their rogs. Okay?

2 As we continue on --

3 THE COURT: Well, is it your position that persons of
4 ordinary skill, including your company's employees, don't
5 understand the meaning of those terms, RSC, LSO, and the like?

6 MS. KHACHATOURIAN: Your Honor, our -- our position
7 is that every engineer has a different idea of what that means
8 and every company does.

9 This is not a standards case. Alacritech is pursuing
10 this case as if it's a standards case. If you do RSC, if you
11 do, you know, LRO, then you infringe.

12 But at the time the patents were filed -- and I'll
13 walk Your Honor through this -- these terms were not used.
14 They're modern day terms, and depending on which engineer you
15 ask and which company, they'll all have a different response.

16 And, in fact, Your Honor, I have an email among
17 engineers, HP, Microsoft, and QLogic where -- and I'm sorry the
18 print is so small, but essentially folks from Microsoft and
19 QLogic are talking about an acronym, and essentially the guy
20 from Microsoft says what is RSC? And this is in 2014.

21 So these engineers are debating what these acronyms
22 mean back then. So what I would submit to Your Honor -- and
23 even in Alacritech's infringement contentions, there's
24 different definitions of what these acronyms stands for.

25 So here's some more infringing RSC functionality.

1 Then here they're citing to an Intel document -- you'll see it
2 right here, the Intel -- and saying that our -- our product
3 works the same, so now it's their definition, Intel's
4 definition.

5 So there's all these mental gymnastics that we have
6 to go through to try to figure this all out, and I'll show you
7 some other examples.

8 THE COURT: So tell me, did you resolve that problem
9 by deciding to restrict your answers to the products that they
10 have accused in their contentions?

11 MS. KHACHATOURIAN: Your Honor, we did not do that.
12 What we did was based on our understanding, as I told the Court
13 on June 15th, we don't believe any other products infringe.

14 Now, they've identified other products. Under what
15 definition, I don't know, and they're now in the contentions,
16 so we're going to look at them. We need to talk to our
17 engineers. We need to speak to our experts.

18 But I will tell you, having spoken to our engineers
19 and having spoken to our experts and having spoken to other
20 people in the field, there is no standard definition of these
21 terms, and that's even shown in the original infringement
22 contentions.

23 THE COURT: Well, what I need to understand is that
24 you have answered these interrogatories relying upon your
25 engineers' understandings of these terms, if necessary, but not

1 relying on whether or not you believe that the functionality of
2 your products infringes.

3 MS. KHACHATOURIAN: Your Honor, we answered the
4 questions based on our understanding of what these
5 functionalities are to the extent that we know.

6 THE COURT: All right. So --

7 MS. KHACHATOURIAN: We did not withhold information
8 because the term infringing wasn't in there -- was in there. I
9 told Your Honor that I was going to supplement the responses on
10 June 30th, and as you can see, we provided multiple responses.

11 We've never once not provided a response in this
12 second supplemental response. We answered, and we are
13 preserving our objections, but we didn't withhold information
14 based on the term infringing.

15 What we did is -- like any other person would do is
16 based on our understanding on the information that what we've
17 been provided, we responded.

18 THE COURT: All right. And address, if you would,
19 the specific products that -- that have been identified in the
20 argument here. I think you've referred to the 5709 and
21 following by saying that you included those because they had
22 been accused in connection with Dell.

23 MS. KHACHATOURIAN: Yes, Your Honor. On August 25th,
24 Alacritech served amended contentions to Dell, and in our
25 review of that, with respect to products that were

1 identified -- and, by the way, those products were never
2 identified against Cavium in this case at all. They were
3 identified against Broadcom and Dell.

4 We saw that -- when we got that information, we
5 researched it and saw that we actually sell those products to
6 Dell, and so I offered to amend them, amend the response to
7 include them, but that offer was rejected.

8 THE COURT: Why weren't they included in your
9 original answers?

10 MS. KHACHATOURIAN: Your Honor, because we did not
11 believe based on what we understood the infringement
12 contentions to be and these functionalities to be to -- to be
13 responsive.

14 THE COURT: All right. So it's not a question of
15 whether you felt they infringed, but you didn't believe that
16 they included the RSC or LSO functionality or whatever the
17 functionality was that was asked for?

18 MS. KHACHATOURIAN: Correct, Your Honor, based on our
19 understanding. Now, that's the biggest problem here. Okay?
20 Is their understanding and our understanding and everyone
21 else's understand is different.

22 And, by the way, all the other Defendants got
23 supplemental contentions way before we did, so, you know, I'm
24 not privy to what the other Defendants did. I don't have
25 access to that information other than with respect to Dell and

1 the supplemental contentions vis-a-vis Cavium.

2 But at the end of the day what they're doing here is
3 they're using this alphabet soup and they're using it
4 interchangeably with their patents, but, as I will show Your
5 Honor, none of these words are actually in the patent claims.
6 None of them at all.

7 THE COURT: Well, I understand. Tell me now what
8 about this 41000 series that they've identified that has been
9 apparently publicized by Cavium in late June?

10 MS. KHACHATOURIAN: Your Honor, it's the first I've
11 heard of it. At no point did Quinn ever mention the 4100 to
12 me, and as you know, I haven't been able to look at the
13 supplemental contentions because there's two boxes there that
14 were provided, you know, at midnight before I was about to come
15 here, so I haven't had a chance to look into it, frankly. I've
16 never -- I've never heard it before.

17 THE COURT: All right.

18 MS. KHACHATOURIAN: But what I can tell you is based
19 on our understanding of these functionalities, we provided a
20 response.

21 Now, they may disagree with what we believe; and, in
22 fact, Your Honor, when we defined these terms, they've
23 objected, and I can pull their objections up for Your Honor,
24 but they've essentially objected when we've tried to get some
25 clarity on these terms.

1 And if you look at the infringement contentions,
2 they're differing definitions even in their own infringement
3 contentions, so here's a definition of receive segment
4 coalescing, and they cite to a Microsoft document, and then
5 there's another definition that goes on. So, I mean,
6 throughout their -- even their own infringement contentions,
7 they -- they give us differing definitions.

8 So, what, I have to go read the Microsoft document.
9 I have to read the infringement contentions. I have to go talk
10 to my engineers. I have to -- I mean, there's a lot of mental
11 gymnastics here, so we probably do not have a meeting of the
12 minds in terms of what these words mean.

13 THE COURT: Where have you set out your understanding
14 of them? I think you were referring to one.

15 MS. KHACHATOURIAN: It's -- it's in our responses,
16 Your Honor. I'll -- I'll locate that. I don't think that
17 we've fully articulated, frankly, like, by every -- every word
18 of our definition, but, Your Honor, we can do that.

19 But at this point, you know, it's their burden to
20 tell us what their infringement theories are and what these
21 words mean, and they never have, as you can see from their
22 interrogatories. They just assumed that if you do any of
23 these, it's all the same definition and that you infringe.

24 And by the way, Your Honor, they propounded new
25 discovery on us yesterday where they try to fix these defects.

1 They make out the word infringing in all the interrogatories.

2 I would say about two-thirds of the interrogatories deal with
3 non-infringement contentions and our position on
4 non-infringement, and they take out the word infringing.

5 And they also try to tie these functionalities to the
6 claims where they call them LRO claims, RSC claims, and they
7 identify the actual claims, but they don't go as far as to
8 provide what the definition is of these functionalities.

9 THE COURT: All right.

10 MS. KHACHATOURIAN: So if for whatever reason they
11 think that these products should be accused products and we
12 don't, it's because there's no meeting of the minds whether in
13 the industry or whether in this litigation as to what these
14 terms mean.

15 THE COURT: All right.

16 MS. KHACHATOURIAN: But, Your Honor, a lot was said,
17 and so I'd also like to discuss a few other things.

18 There was a lot of discussion about what we have done
19 and haven't done in discovery, and a picture is being painted
20 that we are not being cooperative and that we have not provided
21 information, and that is simply not true, and so I would just
22 like to take a little bit of time to explain what we've done
23 and where they're wrong essentially.

24 We have produced 18 million lines of code, including
25 the RTL code, since the last hearing, and we have accommodated

1 their experts, and here is the sign-in sheet of all of the
2 times their expert has come to our office to review the code.
3 You can see it's May, June, July, and August, with the last
4 date being August 17th, 2017. We have never denied them access
5 to our code, and they have spent a significant amount of time
6 with the code, and there are no deficiencies in terms of what
7 code we have provided.

8 So they came in here and said the RTL code was the
9 most important thing for them to understand how all the
10 products work, and they received it. In addition, in their
11 motion they keep complaining about financials, and
12 Mr. Paunovich made the bold statement about his bar license and
13 said I had a conversation with him about the financials, which,
14 frankly, I don't believe I had.

15 But, nonetheless, here are examples of the financials
16 we've produced. It's 354 pages long. It shows the customer.
17 It shows the model number. It shows the series number. It
18 shows the quantity sold. It shows the revenue amount. It
19 shows the cost. It shows the revenue margin. It shows the
20 ship date and the fiscal year.

21 We actually served two days ago a supplement to this
22 because they had asked for us to supplement our financials to
23 get it up to the most recent quarter, and we provided the same
24 information and supplemented.

25 And we actually made it easy for them. Instead of

1 giving them two separate spreadsheets, we actually read it
2 again from beginning to June and provided to them all in one
3 spreadsheet, so the idea that they don't have financial
4 information is just not true. And, in fact, it's very similar
5 to the type of financials they provided.

6 Their comptroller testified a few days ago that she
7 generated spreadsheets for fiscal year 2012 and on because we
8 didn't have that information, and they produced it right before
9 the deposition, on the eve, and said she had spent all time
10 preparing those spreadsheets, so every -- the financials -- our
11 financials are no different from theirs. We've provided it in
12 the same manner they have and did it promptly.

13 Then they're complaining about alleged documents that
14 were on the source code computer that were never produced.
15 What these documents are, sometimes in the code there will be
16 non-source code documents embedded in the code, and sometimes
17 there's -- there's -- they would be in other folders because
18 they're relevant to the code.

19 They asked us about that information in June and
20 brought it to your Court's attention, and, of course, I told
21 them prior to the hearing that we had produced all of that
22 information they requested on June 13th.

23 They then came back and said, no, you didn't and, by
24 the way, we want more based on our newest inspections. No
25 problem. We turned it around in three days, and we told them

1 most of what you're asking for is duplicative of what we
2 produced on June 13th, but we're just going to produce
3 everything to you again because it's just not worth it.

4 So here's some examples of the dupes that we told
5 them, and they just didn't believe us. I personally don't
6 think they actually know the documents that they have.

7 So here is NIC Multi TC Firmware Interface Version 2.
8 I'm just showing the cover pages because the documents are very
9 voluminous. There's a Bates number here. It's 26160. That's
10 from the June 13th production. The next document has the same
11 title. This is NIC Multi Function TC Firmware Interface
12 Version 2.0, and the Bates number is 48253.

13 Because when they asked us again to produce in
14 August, we turned it around, and even though it was a dupe and
15 we already gave it to them, we said, here, we're just going to
16 produce it all again. And so that the Court knows that this
17 just isn't a coincidence, I could have brought a mountain of
18 dupes, but I picked three just to make my point.

19 Here is the Hilda T10 Interface document, Rohan
20 Patil, 1/24/2012, Bates number 27749. That's from the
21 June 13th production. Your Honor will see there's another
22 document with the same name, same author, same date, with a
23 later Bates number 50910. There's other examples I could
24 provide, but I think everyone gets the point.

25 So they complain in their motion that they didn't

1 receive this information and that we should be compelled, but
2 we've provided it twice now, so I don't think there's anything
3 left for us to do there.

4 In addition, they complain that there's 60 products
5 that we didn't produce designer guides and all kinds of things
6 for. Again, not true. They have this idea, just like they do
7 with the functionalities, that everyone is the same. Everyone
8 is going to have the same categories of documents. Everyone is
9 going to name everything the same, and that's simply not true.

10 So, for example, here is an email from a Quinn
11 Emanuel partner Michelle Clark, and in her email, she asked us
12 to identify certain design guides for products by Bates number,
13 and it's a pretty long list. We had already told them that we
14 didn't withhold any technical information. We also explained
15 to them how we did our search.

16 And I want Your Honor to know because they're
17 painting this picture like we're not taking our discovery
18 obligation seriously, but we are. None only did we talk to the
19 heads of -- of -- of the VP's and heads of the engineering
20 grounds for these product lines, we searched every possible
21 repository where these documents would be, and we searched
22 Wiki. We searched Share Point. We went to the heads of
23 engineering, asked them are there any additional documents.

24 We spent a lot of time gathering everything we
25 possibly could, and we did not withhold. If there was a

1 technical document, we produced it, and we also explained to
2 them that there is no formal naming process at Cavium in terms
3 of the types of documents that are created. Sure, an engineer
4 could just create whatever they want and call it a design guide
5 or design spec, but there's no formal process at Cavium or
6 QLogic in terms of a naming convention.

7 So the fact that you may have design guides for
8 certain products and not others doesn't mean we withheld
9 anything. In fact, it's quite the opposite. But, nonetheless,
10 we did our best to look into the homework we got, which was a
11 lot, and you'll see three highlighted products, the 57800S, the
12 57810S, and the 57840S where they claim they do not have design
13 guides.

14 I'm now going to show Your Honor the actual design
15 guides for those products that they've had in their possession
16 for a very long time. Here is the designers guide for the
17 57810S. Here is the designers guide for the 57800S. Here is
18 the designers guide for 57840S.

19 And, of course, we produced other technical
20 documents. I just bring them so the Court can get a feel for
21 it, and this by no means is the limit, reference guides,
22 developer guides, other designer guides, designer guides,
23 designer guides, ethernet driver developer guide.

24 So the idea that they don't have any technical
25 documents or source code is just not true. They have

1 everything they need and more to do what they need to do in
2 this case, and hopefully they did in their supplemental
3 contention.

4 In addition, they claimed in their motion and in
5 argument today that there's all these code names that weren't
6 disclosed, we didn't work with them. Despite all these
7 obstacles, they were able to persevere. To give you an idea of
8 Cavium's approach to all of this, if -- if we're asked a
9 question, we try to respond and we try to resolve these things
10 informally.

11 So on June 8th, someone at Quinn Iman emailed and
12 asked about certain code names they needed translation of in
13 order to help with the source code inspection, and they
14 conceded in there that what had happened was that the
15 interrogatory, which is actually interrogatory one that
16 apparently was slipped into this rushed motion that Alacritech
17 filed, our response wasn't due yet, so could they please have
18 the information.

19 Did we say no? No, that's not what happened. We
20 responded on June 9th, and we provided a translation of the
21 code names. So this idea that Cavium isn't cooperating in
22 discovery -- this is just one example, I could give you
23 mountains of them -- is simply not true. We have bent over
24 backwards to provide information on reasonable discovery.

25 THE COURT: All right. Well, let -- at this point I

1 want to make sure that we just focus on the matters at issue on
2 the motion, and I -- I gave you a chance to respond because I
3 think it was fair to do so, but let's move to what is at issue.

4 MS. KHACHATOURIAN: Your Honor, that was at issue in
5 their motion to compel.

6 THE COURT: I -- I'm not doubting that there are
7 references in their motion, but at the hearing now, I'm calling
8 upon them to tell me what it is they want, and so that's what I
9 want to focus on, and I -- I have some more questions for the
10 Plaintiff, and I promise I'll give you a chance to respond.

11 MS. KHACHATOURIAN: Okay, Your Honor. If I could
12 just say, and I'll yield, is their motion to compel also talked
13 about email production and apparently compelling of depositions
14 that we knew nothing about and never had a dispute with.

15 So it would be great to hear from Alacritech actually
16 what's now the subject of the motion because the night before
17 they filed their motion, we gave them dates for five witnesses
18 that they accepted, and then all of a sudden they move to
19 compel against us, which we never really understood.

20 THE COURT: All right. Thank you.

21 MR. PAUNOVICH: Your Honor, if it's okay with the
22 Court, I think it would be best if we just proceed with the
23 specific things that we're trying to compel.

24 THE COURT: And that's fine. Let me just --
25 Mr. Paunovich, I -- the opening part of your argument centered

1 on this issue about whether infringing was affecting the
2 responses. I think what I've heard indicates to me is the
3 Defendant is contending that they did not limit their responses
4 in that way, and you have not shown me anything in the written
5 responses that indicates they did.

6 So before we move from that, do you have anything
7 else that you want to offer on that issue?

8 MR. PAUNOVICH: Yes, Your Honor, and I appreciate the
9 opportunity to do that.

10 I didn't have it at my fingertips before. I do
11 apologize for the writing. What I'm about to put on the Elmo
12 is a marked up copy of the Cavium Defendant's second
13 supplemental responses to the first set of common
14 interrogatories, and specifically on page 28, their second
15 supplemental response to interrogatory number seven.

16 THE COURT: All right. I have that in front of me.

17 MR. PAUNOVICH: So contrary to what is being
18 represented to the Court, this is -- so this is the sum total
19 of what has been provided to us after the June 15th hearing
20 where the word infringing was stricken, where they subsequently
21 had to respond to party interrogatory number four, which does
22 not include the word infringing.

23 This is the supplement that we got. They didn't
24 change any identification of products whatsoever. They say
25 Cavium denies that it infringes and, therefore, does not make

1 and has not made or used, and they quote back the portion of
2 our interrogatory. They literally made no supplement
3 whatsoever since the last hearing, notwithstanding the issue
4 with the infringing language. This is what they are relying
5 upon.

6 Now, I understand that counsel has made that
7 representation here today, and they've raised a new argument
8 which has never been previously raised before that they don't
9 understand or know what the definitions are. When, for
10 example, we refer to LSO functionality, she said, well, what
11 does that mean.

12 If Your Honor -- and I forget if we handed up a copy
13 of our original request. They include the same definitions.
14 They define what these terms are. It says -- so just taking
15 LSO functionality as an example, because that's what's being
16 asked for, products that have this functionality.

17 And it says they'll be understood to be these handful
18 of things. LSO could mean any one of these things, and the
19 notion that Cavium doesn't understand what those are is simply
20 not true. If --

21 THE COURT: Mr. Paunovich, I guess the problem I'm
22 having is that they have given responses that on their face are
23 complete, and it is true they object to language used in the
24 interrogatory, but there's nothing in here that says they're
25 withholding production based on those objections, and counsel

1 has told me that, in fact, they're not.

2 So I think the next step is when you take the
3 depositions, if you determine that they have not provided
4 complete discovery, then there will be an issue to take up; but
5 at this point, I don't have a record that supports further
6 action by the Court.

7 And if you disagree, tell me what that is, but I'm
8 looking for something that indicates that what Ms.
9 Khachatourian has told me is not accurate.

10 MR. PAUNOVICH: Yes, Your Honor. I do have something
11 to say on that. If we -- if I could impose upon the clerk to
12 give the screen to the computer?

13 So what I understood Ms. Khachatourian to represent
14 to the Court -- while this is coming up, what I understood her
15 to represent to the Court is what they answered on is based on
16 their understanding of the defined terms of LSO functionality.

17 And she said we don't -- we don't understand that
18 it's anything more -- you know, we -- we couldn't have
19 understood, for example, that the 4100 series offered these
20 functionalities, and if I weren't having technical difficulties
21 right now, --

22 THE COURT: Well, --

23 MR. PAUNOVICH: -- a slide that I put up before uses
24 the exact terminology that's in our definition. It reads,
25 performance features, TCP segmentation offload, large segment

1 offload, generic segment offload, large receive offload,
2 receive segment coalescing. It's the exact definitions.

3 We don't have any declaration from a Cavium witness,
4 we don't have any evidence that Cavium -- not the Duane Morris
5 firm, but that Cavium's engineers do not understand when they
6 look at and see in our definitions to identify any product that
7 has something called large segment offload that they are
8 confused somehow in going back to their data sheets where it
9 uses the very same language.

10 THE COURT: I am assuming that Cavium's engineers
11 have an understanding about what those terms mean, and my
12 understanding is that Cavium is taking the position that they
13 have responded to your discovery consistent with Cavium's
14 engineers' understanding of those terms.

15 If you determine in your depositions that that's not
16 right, that their engineers understand that the terms cover
17 things that they have not produced, then you've got a basis for
18 me to act on.

19 I understand you have something about this 41000
20 series that appears to have been issued June 27th or
21 thereabouts; and that is, I guess, right about the time these
22 answers are being put together.

23 But is that the only indication you have that they're
24 not complete?

25 MR. PAUNOVICH: The -- the various model numbers that

1 I read -- the series that I read into the record earlier, Your
2 Honor. So we have the 41000 series, the 5706, 5708, 5709,
3 5716.

4 The trouble is, Your Honor, those I'm very confident
5 that we'll be able to go to deposition and demonstrate from the
6 documents -- some of the documents we have that those products
7 at least in high level marketing indicate that they have these
8 very same functionalities.

9 The trouble is they're withholding then that broader
10 set of technical documents relating to those, and what's more,
11 what I won't be able to determine in deposition is, putting
12 these aside, what more don't we know about.

13 And we've raised this with Cavium's counsel because,
14 for example, if we look at the total financials that they have
15 for their ethernet products, it represents less than REDACTED BY ORDER OF THE COURT
16 REDACTED over a short period of time, and we go to there
17 10K's, and they say in their 10K's that what they call their
18 advanced connectivity platform represents their ethernet
19 business. It's basically all of the accused products.

20 And if we look over even just a three-year period, so
21 not the entire infringement period here, we see revenues over
22 \$500 million, and I've asked the question point blank, I can't
23 make sense of this because your 10K's represent that all of
24 your ethernet products do about \$500 million in business. You
25 are only identifying a smaller portion that does this certain

1 amount of business. Where's those other products? We don't
2 know them because we've gone on --

3 THE COURT: I understand that, and that's great
4 fodder for depositions. What am I supposed to do with that?

5 MR. PAUNOVICH: Respectfully, Your Honor, what we
6 would like is an order that they identify any product that has
7 the functionalities that we've identified. Party interrogatory
8 number four is not infected with the word infringing. It's
9 very clear.

10 THE COURT: And do they limit their answer in a way
11 that is objectionable? In other words, what is there to show
12 me in that answer that they have not properly answered it?

13 MR. PAUNOVICH: Okay. So if I can impose upon the
14 clerk again to turn the focus back to the Elmo?

15 So you have in -- we handed up to you Cavium's
16 response to common interrogatory -- I'm sorry -- party
17 interrogatory number four. As a refresher on that, it asks
18 them to identify by name, model number, and any unique
19 identifiers all Cavium products or services that were made,
20 used, imported, offered for sale or sold during the
21 infringement period that support, practice, or enable the
22 identified functionalities.

23 The identified functionalities -- this is going back
24 to the definitions. You can see at the top here said that
25 those should be understood to mean LSO functionality, RSC

1 functionality, et cetera. We look at those, and there's no
2 mention of the word infringing. We look at those
3 functionalities --

4 THE COURT: I know, but --

5 MR. PAUNOVICH: No -- I'm getting to that. I
6 apologize. I know your question, Your Honor, and I just want
7 to make sure you had the context.

8 So now we look at the response to interrogatory --
9 party interrogatory number four, Cavium's objections, entire
10 first paragraph after -- this is page 43. Then we go to the
11 second paragraph, more objections, page 44. I'm sorry.

12 They -- they respond to another portion of the -- of
13 that interrogatory and describe what series refer to the
14 internal names; but then for the identification, i.e. tell us
15 what products that you offer that have these functionalities,
16 they refer -- they invoke Rule 33D, and they identify the
17 products that can be found at this Cavium Bates range.

18 That Cavium Bates range is the products -- it's the
19 financials for the products that we had in our infringement
20 contentions. It's nothing more. It is literally just what we
21 have accused, nothing more. They've been asked in very clear
22 terms, and they haven't identified anything beyond what we're
23 able to identify ourselves publicly, and it excludes all of the
24 examples that we've given already.

25 THE COURT: All right.

1 MR. PAUNOVICH: Unless Your Honor wants to hear more
2 on common interrogatory one and party interrogatory four, we'll
3 move on to the next subject.

4 THE COURT: Well, let me get a response on number
5 four, and that is -- I have a question. Ms. Khachatourian, --

6 MR. PAUNOVICH: Thank you, Your Honor.

7 THE COURT: -- are you representing that the response
8 to interrogatory number four that is contained in your
9 responses to the first set of party interrogatories lists all
10 the products that your client believes contain these accused
11 functionalities?

12 MS. KHACHATOURIAN: Your Honor, the answer is --
13 based on our understanding of these functionalities, the answer
14 is yes.

15 I will point out to Your Honor that we never
16 discussed these rogs with Alacritech before they filed their
17 motion. We were actually surprised that it was part of their
18 motion.

19 But just to rebut what Mr. Paunovich is saying, the
20 accused instrumentalities, which is referenced in interrogatory
21 number four, actually continues to have the infringing
22 definition, which, frankly, at this point I think we've talked
23 about enough.

24 THE COURT: Well, what -- what I am inclined to do is
25 to direct that Cavium put in their answer to interrogatory

1 number four that they have identified all of their products
2 that include the accused -- the identified functionalities.

3 And you can put whatever language you want to in
4 there about not admitting infringement, but there needs to be
5 something that makes it clear that your company is taking the
6 position that this identification is all of the company's
7 products that include these identified functionalities, and if
8 there are more, then they should be added to it.

9 But I think that they do have the right to have a
10 definitive answer to that, which should not be burdensome, if,
11 in fact, all that's doing is clarifying what you've already
12 done.

13 MS. KHACHATOURIAN: Your Honor, what I would say
14 about that is I've just been served two boxes of supplemental
15 infringement contentions, and in order to provide that kind of
16 statement, I need to look at those contentions.

17 THE COURT: Well, I don't --

18 MS. KHACHATOURIAN: I can --

19 THE COURT: Defined functionalities is a defined term
20 in this interrogatory set, so --

21 MS. KHACHATOURIAN: But, Your Honor, we go back to
22 the same issue, which is it's just alphabet soup. Our
23 understanding of these terms is different from other people's
24 understanding. It's different. They've never actually
25 identified it.

1 THE COURT: And you have -- your engineers have the
2 obligation to answer this consistent with their understanding
3 of these terms. I -- I understand that, but I don't think that
4 we have to get an industry-wide agreement on what these terms
5 mean for Cavium to answer.

6 And as long as your engineers can defend the position
7 they take in giving their answer, then, you know, you have not
8 violated your discovery obligation, but I do believe that you
9 cannot tell from this answer whether or not it is definitive,
10 and I think they're entitled to have that.

11 MS. KHACHATOURIAN: Your Honor, it's a -- these
12 questions are the same as the other interrogatories, and they
13 have the same defect. So then on the record I would just like
14 to make it clear then infringing has been stricken, and, you
15 know, we'll -- we'll provide a response as you suggest.

16 But I would ask that in our party rogs to Alacritech
17 concerning willfulness, that they have to put in a statement
18 that they have provided all the information that they have
19 because I actually don't think that's the case.

20 THE COURT: Well, I guess I will deal with that when
21 it is put before me, but right now I'm just dealing with this
22 motion and interrogatory number four.

23 I will hear whether there is a similar complaint
24 about any of the other interrogatories that are at issue in
25 this motion, but that will be the order as to number four.

1 Let me hear from the Plaintiff about the other
2 interrogatories as issue and then I'll give you a chance to
3 respond.

4 MS. KHACHATOURIAN: Your Honor, before I yield, I'd
5 just like to say the statement that I'm asking for with respect
6 to our party rogs to Alacritech is actually the subject to our
7 motion to compel.

8 THE COURT: Okay.

9 MS. KHACHATOURIAN: So I think that would resolve the
10 issue if they are able to make a similar statement in terms of
11 their response.

12 THE COURT: I will go back to that if we need to,
13 but --

14 MR. PAUNOVICH: Your Honor, the next discovery topics
15 that I would turn to -- and I think these can be fairly
16 quick -- are common interrogatory number one and common
17 interrogatory number two. The -- for all the briefing about
18 these, we really take issue with a very small point about both
19 of these.

20 In the second supplemental responses that Cavium has
21 provided to each of these interrogatories, they -- and just for
22 clarification, common interrogatory number one is directed to
23 what distinctions or differences Cavium believes exist between
24 its accused products that are material to infringement in this
25 case, and interrogatory number two is directed to their

1 non-infringement positions.

2 We don't take issue that they didn't provide a
3 substantive response, but what we take issue with is they say
4 that their response is by non-limiting example.

5 We dealt with this issue with Cavium and some of the
6 other Defendants before where basically, as we understood at
7 least your Court's prior rules, having that sort of catch all
8 hold aside of, you know, I'm giving you examples, but I might
9 have more, isn't sufficient to preserve the identification of
10 some other examples, and I can show you just as an example
11 here.

12 This is their second supplemental response to
13 interrogatory number one when they're identifying alleged
14 differences between their products and they say for a
15 non-limiting example. The same thing is true for interrogatory
16 number two. We get a bunch of repeated examples for their
17 non-infringement positions they say by non-limiting example,
18 another non-limiting example, next page more non-limiting
19 examples.

20 So we don't take issue with -- I mean, we'll
21 certainly oppose and rebut the -- the issues that they have
22 raised, but our motion to compel isn't directed to those so
23 much as it is you can't provide non-limiting examples on these
24 interrogatory responses.

25 They either have additional distinctions and

1 differences in response to interrogatory number one that they
2 should and need to identify now or later on they're going to
3 have to move with good cause to add that. You know, we're very
4 far along in the case, and they should know this.

5 Same thing is true for the non-infringement
6 arguments. We provided our contentions. None of our theories
7 have changed, even in our supplemental contentions. If they
8 have non-infringement arguments that they're sitting on that
9 are part of those examples that they have not provided, then we
10 would ask that they be provided.

11 If, on the other hand, this is just sort of standard
12 boiler plate that us lawyers are -- all of us are sometimes
13 guilty of doing then, saying we're giving you our reasons, but
14 we don't want to limit ourselves, but those aren't sufficient
15 to preserve anything that's not identified, then -- then we're
16 okay with that.

17 As I understand it, that would be consistent with the
18 Court's prior rulings on these sorts of hold off statements
19 that have been in interrogatories, so I'll rest on these two
20 for the moment because that is the dispute here on these two.

21 THE COURT: Mr. Paunovich, we do not as a district
22 require non-infringement contentions, and those typically -- at
23 least the most complete statement of those positions typically
24 come from the experts.

25 I understand that if the party itself already has

1 knowledge on these things, there's no reason that they
2 shouldn't provide it, but I don't see how this is going to
3 limit their ultimate position, which would be based on what the
4 expert has to say.

5 MR. PAUNOVICH: And that would be -- I take your
6 point, Your Honor, with respect to interrogatory number two,
7 and certainly experts, by all means, sometimes come forward
8 with additional opinions than what the parties are able to
9 identify. And if that's the case, so be about it.

10 We don't want to get into a situation where, you
11 know, the expert's relying on, for example, some interview with
12 the Cavium witness, some information that he or she has
13 gathered from -- from Cavium that was not disclosed to us
14 earlier on so that we could then cross-examine that witness
15 when we're deposing them in a few weeks.

16 With respect to common interrogatory number one, this
17 is, I believe, a slightly different issue. We have asked them
18 for the purposes of trying to streamline this case, because we
19 do believe that this functionality, as our expert has supported
20 now in voluminous supplemental contentions to all Defendants,
21 that the functionalities do, in fact, function materially in
22 the same way for purposes of infringement, and that's supported
23 by code, documents, et cetera.

24 And part of what we did in those supplementations is
25 address the alleged differences between the accused products

1 that the Defendants each have identified in response to common
2 interrogatory number one.

3 So we have done that for Cavium contentions as well
4 as the others, and to the extent it's been applicable, we've
5 tried to -- even where one party's identified alleged
6 differences, we've tried to port that over to others, even if
7 they haven't raised that themselves.

8 So here we just -- we don't want to be surprised --
9 you know, we've taken a position based on the differences that
10 the Defendants and Cavium identified. We don't want to be
11 surprised later given that our experts have taken a position
12 that, oh, you know, we -- there's this other non-limiting
13 example that we didn't tell you about as to how our products
14 are different that, you know, shakes the tree of your
15 representative product framework.

16 THE COURT: All right. Ms. Khachatourian, I'm going
17 to deny the motion as to interrogatory number two, but I'd ask
18 you to respond as to interrogatory number one.

19 MS. KHACHATOURIAN: Your Honor, we have responded to
20 interrogatory number one already, but what I'll say here is I
21 have two boxes of new infringement contentions. Okay? So I
22 need to review those infringement contentions and then see how
23 to supplement these rogs if necessary.

24 THE COURT: All right. I -- I don't think that's
25 unreasonable since this deals with infringement and you have

1 new contentions.

2 What is a reasonable period for you to review those
3 contentions and supplement your answer?

4 MS. KHACHATOURIAN: Honestly 30 days. That's a lot
5 to go through, and we asked for them way earlier than they gave
6 it to us. Your Honor issued an order in July, and we didn't
7 get these until September 12th.

8 THE COURT: And what --

9 MS. KHACHATOURIAN: I have to speak to experts. I
10 have to speak to multiple engineers over different departments.
11 I mean, there's a lot that goes into this.

12 And with two boxes of contentions that were delayed
13 because they knew they were going to have to do substantive
14 revisions to them that was tying up their experts. As they
15 have said, these aren't allegedly -- I haven't read them yet,
16 but I'll take their word for it -- perfunctory amendments. I
17 hope those two boxes are substantive.

18 And I would also add that they propounded -- they
19 being Alacritech -- additional RFAs and rogs on us yesterday
20 that, again, all involve non-infringement, the same type of
21 issues we've already been talking about. I can read some to
22 Your Honor, but I would say it should all be due at the same
23 time --

24 THE COURT: All right.

25 MS. KHACHATOURIAN: -- because they're all related.

1 And I would also note to the Court that they've changed their
2 definitions.

3 THE COURT: I will grant that request, that your
4 supplemental response to this interrogatory will be due at the
5 same time as your responses to the recently served
6 interrogatories.

7 MS. KHACHATOURIAN: Thank you, Your Honor.

8 I would just like to point out -- and I know I'm
9 probably wearing out my welcome, but with respect to
10 Alacritech's responses to all our discovery when we're dealing
11 with what I call the alphabet soup, objection 15, Alacritech
12 objects to the term TCP segmentation offload functionality.

13 THE COURT: I will --

14 MS. KHACHATOURIAN: It goes through --

15 THE COURT: I'll give you a chance to get back to
16 that, but I want to finish this motion.

17 MS. KHACHATOURIAN: Okay. Thank you, Your Honor.

18 THE COURT: All right. What else, Mr. Paunovich, is
19 there on this -- on your motion to compel?

20 MR. PAUNOVICH: Common interrogatory number three,
21 Your Honor. This is directed broadly to financials that Cavium
22 derives from the products that implement the identified
23 functionalities that we've been talking about.

24 The primary dispute here, I think this is just a
25 natural extension of Your Honor's order with respect to party

1 interrogatory number four; that is, once they identify the
2 additional products that have those functionalities as
3 understood by engineers, we also want the financials associated
4 with any new products.

5 So that's issue one that's under interrogatory number
6 three. Just give us financials for any new products, for
7 example, like the 41000 series, the 5708, and others that we've
8 been talking about.

9 Issue two is that interrogatory number three asks for
10 any revenues that they derive as a result of the sale of the
11 accused products in this case, so, for example, let me -- I
12 seem to be very bad with this Elmo.

13 But subsection D says revenue -- I'm sorry.
14 Subsection C and D, revenues from subscriptions, maintenance,
15 upgrades, support, et cetera, for the accused instrument --
16 each instrumentalities, the revenues from any service, et
17 cetera, provided with those products.

18 The spreadsheet that Ms. Khachatourian put on the
19 Elmo earlier doesn't have any of this other revenue that would
20 be convoyed sales or revenue derived from the sale of these
21 products.

22 We don't know if any such revenue exists, so we would
23 ask that the Court order that to the extent that it does exist,
24 that they identify it and produce it, along with the
25 supplemental financials. So that's issue two of this.

1 Lastly, there is -- there are certain pieces of
2 information that -- in the spreadsheet that they produced,
3 which they produced to us first in a PDF. We asked for it to
4 be produced in native so we could manipulate it, add the
5 numbers, et cetera. They refused to do that until we filed
6 this motion, and we just got that production in the last two
7 days.

8 Putting that aside, there's certain information that
9 appears to be missing from that, for example, the dates. They
10 provided first shipment date, but they don't break down the
11 individual each unit sale date, so that if we run into issues,
12 for example, on induced infringement and when they had notice
13 and things of that nature for non-apparatus claims, what's the
14 relevant point? Where do we draw the line in the sand?

15 We can't tell right now because for any given
16 product, they just said here's the product, I've sold X number
17 of units, and here's my total aggregate revenue, and here's the
18 first day that I sold it. We'll certainly explore that in
19 deposition.

20 We also want to avoid burdening the Court to come
21 back on issues like that, minor issues. We would expect and
22 want to work cooperatively with Cavium to make sure to the
23 extent they have that information that they produce it to us.

24 THE COURT: How is that different from what they laid
25 out in those spreadsheets?

1 MR. PAUNOVICH: In the spreadsheet -- so what -- I
2 guess what I'm getting at, so let's say if we take a
3 hypothetical product A and you've sold it over the course of
4 the last six years.

5 From what we understand, the Defendants are going to
6 argue, Cavium is going to argue, you know, that they didn't
7 have notice before this suit was filed -- or it was filed
8 against their intervenee party.

9 And so they're going to say for all the method
10 claims, you're not entitled to any damages for any period prior
11 to filing suit because we didn't have knowledge of the patents
12 and intent to infringe.

13 THE COURT: I know, but I'm just saying the
14 spreadsheets appear to indicate the date of each sale.

15 MR. PAUNOVICH: Oh, no. I'm sorry, Your Honor. I
16 wasn't clear.

17 It indicates the date of first sale, so if you have
18 product A and they say we've sold a thousand of these and our
19 total aggregate sales are a hundred thousand dollars, they --
20 what they identify as the first sale date, like i.e. the very
21 first unit that they sold, but I can't tell, because it's all
22 aggregated, if they made 90 percent of those sales more
23 recently since the lawsuit was filed or if they made them five
24 years ago.

25 THE COURT: I was understanding those spreadsheets to

1 be sale by sale. Do you have one of those?

2 MR. PAUNOVICH: I apologize. Ms. Khachatourian, do
3 you have that? You had that exhibit handy. I don't know that
4 I have that handy. If I have a misunderstanding of it -- thank
5 you. Sorry.

6 MS. KHACHATOURIAN: Your Honor, would you like a
7 copy?

8 THE COURT: Not at this point. Thank you.

9 MS. KHACHATOURIAN: Okay.

10 MR. PAUNOVICH: So I'll just start it here on the
11 left. So they say for this product model number BCM 9578, it
12 goes on, sold to customer Dell in a certain group, they sold a
13 certain quantity, revenue, margins, et cetera, ship date.

14 I apologize if I'm misunderstanding. I -- okay.
15 Then I take that back. If this is -- if this is individual
16 sales and the time of those sales, then we're happy with that
17 as is this would not be an issue, so --

18 MS. KHACHATOURIAN: Your Honor, --

19 MR. PAUNOVICH: -- it would just be the first two
20 issues that I mentioned.

21 MS. KHACHATOURIAN: I will say the rog doesn't
22 actually ask for the information he's requesting, but we gave
23 it anyway, so --

24 THE COURT: All right.

25 MR. PAUNOVICH: So, Your Honor, then just to

1 summarize -- and I apologize for that -- that rabbit hole --
2 the issue is updating the financials with any new products that
3 they end up identifying response to common -- excuse me --
4 party interrogatory number four and any related revenue from
5 services, warranties, et cetera, as called for in subsection C
6 and D.

7 THE COURT: All right. And is there any other issue
8 on your motion?

9 MR. PAUNOVICH: There are a couple other. I think
10 that the rest will be quick. This is probably the largest of
11 the bunch, and I'll try to be very brief on the others.

12 THE COURT: Well, I'll let Ms. Khachatourian respond
13 then on this financial issue.

14 MS. KHACHATOURIAN: Your Honor, --

15 THE COURT: As far as updating it goes, if you
16 identify new products in response to their interrogatory number
17 four, then I -- you should understand that you would be
18 required to provide the other requested discovery regarding
19 those products.

20 MS. KHACHATOURIAN: Your Honor, what I was going to
21 say was they're asking you for an order for products that
22 haven't been identified yet, so --

23 THE COURT: And --

24 MS. KHACHATOURIAN: And I understand our obligations,
25 and obviously if we identify additional products, we're going

1 to provide additional financial information.

2 THE COURT: And that's where I'm going to leave that
3 issue, but let's talk about the issue of revenue from services
4 and maintenance.

5 MS. KHACHATOURIAN: Your Honor, we've already told
6 them several times that we don't have that information. We
7 don't do the things they're asking for in their rogs, so, for
8 example, IT services, consulting.

9 I mean, every subsection here I've told them during
10 meet and confer and my colleague Megan Olesek has told them we
11 have provided what we have, and -- and we don't -- we don't
12 have -- we don't provide the services they're asking about. So
13 there's -- we don't have anything else to provide.

14 And they're having the deposition of the financial
15 person on September 29th. You know, if for some reason there's
16 some kind of miscommunication, misunderstanding, mis whatever,
17 something comes out of it, we'll promptly respond, but as far
18 as we know, we've gone into our databases and provided the
19 relevant information that's called for by the interrogatory
20 that we have.

21 THE COURT: All right. So you -- you have inquired
22 of your client about the other categories of revenue beyond
23 just sales, and your client has indicated to you that they
24 don't have revenue of that sort.

25 MS. KHACHATOURIAN: Correct.

1 THE COURT: All right. I'll accept that
2 representation.

3 Go ahead, Mr. Paunovich, then to the other matters.

4 MR. PAUNOVICH: Thank you, Your Honor.

5 I'll try to cover these quickly, and some of them we
6 can probably lump together as opposed to going back and forth
7 because I do think they're easy.

8 Common interrogatory number four and relatedly we'd
9 also ask for documents relating to this. Ask them to identify
10 comparable licenses. It may be that counsel -- both sides have
11 just said -- have talked past each other on this one, but we --
12 we're not asking them to disclose expert opinions early.

13 What we're simply asking them is if they have patent
14 licenses in their possession, custody, or control right now,
15 regardless of whether or not they have as the -- the -- one of
16 the executing parties Cavium that they identify -- and they
17 believe those are comparable, but they identify and produce
18 them.

19 During meet and confers, their position, as we
20 understood it, was that to the extent that a license does not
21 have Cavium as a party to it, then it is, per se, not in their
22 possession, custody, control. If the answer is simply we don't
23 have any other licenses, then -- and they're willing to make
24 that representation, then we're -- we're fine with that.

25 Relatedly -- and I'll just lump this one in -- part

1 of our motion was to compel certain production of technical
2 documents. Ms. Khachatourian referred to some of these
3 earlier. We weren't -- none of what she put up we're trying to
4 compel, so that's sort of beside the point.

5 There are 61 products, though, that we did identify
6 that we said, you know, you've told us that important
7 differences between all of your products are the hardware
8 circuitry, and we've looked through your production, and for a
9 bunch of your products, that information about hardware
10 circuitry appears to be in these design guides.

11 And for 61 products we don't have that document, in
12 whatever name that it takes. Whether it's design guide in one
13 instance and something else in another instance, that's what
14 we're looking for.

15 It -- Ms. Khachatourian identified, I guess, in her
16 response that we had overlooked three of the six -- three
17 examples out of the 61 where they had produced it, and we're
18 appreciative, and that's -- we've worked with Defendants, and we
19 would hope they would work with us to help identify things
20 that, you know, we missed in the productions, but we have
21 looked thoroughly. We don't see these documents.

22 If the answer is simply we literally don't have that
23 information and so you're not going to see it later either,
24 then that's fine, too. But to the extent that there are such
25 technical documents that disclose this information which we

1 have not received yet, whether they're named design guide or
2 something else, we would simply ask that they be produced.

3 I'll stop there for a moment, and I promise I can
4 wrap up the final issues in a very short statement, but I want
5 to give Ms. Khachatourian a chance to respond to those two
6 issues.

7 THE COURT: All right.

8 MS. KHACHATOURIAN: Your Honor, comparable licenses,
9 I've already told Alacritech on multiple occasions that Cavium
10 does not have a patent licensing program. And, once again,
11 what's comparable, we've done our best, but we have identified
12 licenses that we think are relevant here that have been
13 produced.

14 We don't have access to what the other Defendants
15 have produced in terms of those licenses, and we haven't seen
16 them, and my client can't see -- you know, other than what's
17 with Cavium, Alacritech licenses or Broadcom's license or
18 Microsoft's licenses.

19 So we have identified certain licenses. We've
20 already told them that with respect to Cavium, you know,
21 there's -- they don't -- they don't license their -- their
22 patents, and so we don't have anything to add in that regard.

23 But there may be other licenses out there that we
24 just haven't seen yet because the other Defendants have
25 produced them and we don't have access to them or things like

1 that.

2 THE COURT: Well, obviously the only question is are
3 you representing that whatever Cavium has, whether or not
4 Cavium was a party to the license, if whatever the licenses
5 they have on this technology, you have produced?

6 MS. KHACHATOURIAN: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. KHACHATOURIAN: And, in fact, what I would say
9 is, you know, how we got here was initially before Alacritech
10 filed its motion, they said this interrogatory number four was
11 they wanted us to identify all licenses our expert was going to
12 rely on.

13 And we, of course, resisted that because that's
14 premature expert discovery, and then when we saw the motion,
15 they asked for something else and they're asking for something
16 else here.

17 But what I can tell you is we have identified
18 licenses that have been produced in the litigation that we
19 believe are relevant, but Cavium doesn't have access to every
20 license that's been produced in the litigation nor do I, just
21 so the Court knows. I don't either.

22 THE COURT: And that's fine.

23 With respect to the technical documents, can you make
24 the same representation, that you have provided --

25 MS. KHACHATOURIAN: Your Honor, we haven't withheld

1 any technical documents.

2 What they've asked us to do and we've demonstrated we
3 did a little bit of it. They essentially want me to go through
4 every document we produced and go, here it is, here it is, here
5 it is. I am not going to create an index for them. We did a
6 search. We produced documents.

7 If they have any questions about categories, they can
8 ask our witnesses. But, I mean, I suppose we -- we could try
9 to find and do other searches and maybe something would come up
10 or not, but all I can tell you is that we did a reasonable and
11 diligent search and we've produced every technical document
12 that was responsive and relevant.

13 So they're asking me to disprove what they're saying,
14 and I did with respect to three, but to actually have me go
15 through 61 products and essentially provide testimony I think
16 is out of bounds.

17 THE COURT: All right. Thank you.

18 MR. PAUNOVICH: The last two issues, Your Honor,
19 really relate to some housekeeping items so that we're not
20 having to come back and ask for second depositions of Cavium's
21 witnesses. They're scheduled for deposition in a couple of
22 weeks. I think actually the first one is maybe in less than
23 two weeks, if I have my dates correctly.

24 And, number one, we don't have email, the email
25 production that's required from Cavium. The Defendants -- all

1 Defendants and Alacritech produced the overwhelming bulk of all
2 email in this case. We've produced hundreds of thousands of
3 emails on August 1.

4 We negotiated and worked with all the Defendants. We
5 couldn't negotiate or didn't get meaningful participation from
6 Cavium on search terms and getting emails in queue to produce
7 with Cavium. We are now in the second week of September, and
8 we don't have any of their emails to get ready for these
9 depositions that will be coming up.

10 There's assorted theory or -- or story that's laid
11 out in the papers about who said what when and which terms. We
12 think the record does speak for itself, but bottom line we just
13 simply want to get the emails that will be relevant to the
14 depositions that are coming up.

15 So that the record is clear, there was one mistake in
16 our papers that I'd like to correct. It says that we provided
17 them with search terms on August 10th. That was meant to say
18 July 10th. This was after very long refusal to participate
19 meaningfully in email -- discussion of email discovery.

20 We provided that, and, by the way, we have provided
21 it that late only because we didn't get Cavium's email
22 custodians until approximately two weeks before that, so once
23 we had them, we gave them terms, we provided it.

24 They sat on those email terms for an extended period
25 of time -- I think it was almost a month -- and then objected

1 to the hit counts associated with them. We know our
2 obligations under the discovery order. We've promptly
3 negotiated with them, and we've tried to reduce that down, but
4 it's just been slow going.

5 We can sit up here and fight about it. Ultimately we
6 just want to get the email so we're in a position to go take
7 the depositions and not have to come back on second motion
8 practice and say that we didn't have the material.

9 Relatedly is the topic of their 30B6 -- our 30B6
10 deposition notice and our identification of witnesses and which
11 topics they'll be testifying on. There has been some
12 development in the last few days. They have agreed on most of
13 the topics to provide witness, but we don't know for those
14 witnesses which topics they're going to be testifying on.

15 And their communications regarding it seem to make
16 clear that they're only going to allow their witnesses to
17 testify as 30B6 witnesses on the products in the contentions
18 and how we have alleged our contentions. So it's unclear to us
19 whether we're going to get sort of unfettered company testimony
20 on subjects that relate to some of these issues that we're
21 talking about today.

22 So can I explore with a company witness who can bind
23 the company and testify on behalf of them their understanding
24 of LSO functionality and that sort of thing or will there be a
25 false barrier that's put up that they're only going to respond

1 with -- through the lens of what we've specifically put in our
2 contentions.

3 I think it's a minor point of clarification. If they
4 need to take a little bit more time to give us -- to identify
5 the specific topics for their witnesses, that's fine. We would
6 ask that they're at least a week before the depositions and
7 that they don't restrict the scope of their testimony on those
8 topics to our infringement contentions, but, rather, it should
9 be the company's knowledge on the topics.

10 THE COURT: All right.

11 MS. KHACHATOURIAN: Your Honor, let me start with the
12 depositions first.

13 We told Alacritech on July 20th exactly what topics
14 we were going to produce witnesses for and the scope of it.
15 For whatever reason, despite the fact we have told them this
16 several times, they seem to think it was a couple of days ago.
17 It was July 20th.

18 And we did exactly what every other Defendant did and
19 Alacritech themselves have done, which is I believe they
20 propounded 86 plus topics, maybe more, and we provided the
21 scope of what we would provide, and they are on full notice of
22 that. Regardless --

23 THE COURT: And they're objecting, I believe, to some
24 of the positions you've taken on those.

25 MS. KHACHATOURIAN: I don't know that that's true.

1 Honestly, we were surprised that it was in the motion to
2 compel. We had given them deposition dates. They had had our
3 response since July 20th.

4 In terms of what I understood is the issue was --
5 after reading their motion was they -- they just wanted us to
6 identify the topics that each witness was going to be put up
7 for, --

8 THE COURT: Okay. You may be right.

9 MS. KHACHATOURIAN: -- and we don't have --

10 THE COURT: Just a moment.

11 MS. KHACHATOURIAN: Sorry.

12 THE COURT: You may be right about that, and if so,
13 when are you going to do that?

14 MS. KHACHATOURIAN: So the practice in the -- in the
15 case has been -- and I can show you this email -- folks have
16 been identifying it about a couple of days before the
17 deposition.

18 Here is an email from Tina Lo from Quinn to the Chris
19 Harrer deposition. You can see it's Monday, September 11th, it
20 was sent, and his deposition I believe is on Friday.

21 THE COURT: Well, let's get an understanding. What
22 number of days before the deposition are you agreeing to
23 provide that designation of the witness who will be testifying
24 as to each of the topics?

25 MS. KHACHATOURIAN: Your Honor, we can provide that

1 five days before the deposition, --

2 THE COURT: All right.

3 MS. KHACHATOURIAN: -- which seems to be customary in
4 the case.

5 And the only other issue we were aware of was this
6 idea that some of the deponents we offered for half a day.
7 They asked us for a full day. We said yes. So I'm not really
8 sure why it was raised in the motion.

9 THE COURT: I'll give them a chance to explain if
10 there is more.

11 Tell me about the email.

12 MS. KHACHATOURIAN: Okay. So on the emails, this is
13 how it's happened: The other Defendants and Alacritech didn't
14 start discussing email searches until after the substantial
15 completion date that they had, which was April. Cavium's
16 substantial completion date was June.

17 We have already exchanged search terms, and we have
18 collected all the emails for our custodians, and we ran the
19 searches. We sent them email and called and said, some of
20 these search terms are coming up with too many hits.

21 And what the agreement was that was made was run the
22 searches, we know you're not agreeing to all these search
23 terms -- and it's on both parties. Run the searches, and if
24 there are too many hits, we'll talk about it.

25 So we reached out to them several times. They

1 wouldn't get back to us, so then we sent them an email on
2 August 28th which basically outlined all of the terms we were
3 going to produce email for because it was a manageable amount
4 of hits per custodian, and we took a lot of time to do this.
5 So we're having to do this piecemeal because they wouldn't get
6 back to us.

7 Here are some of the hit counts, 100,000, 170,000,
8 123,000, 182,000. Here are some more by custodian where we're
9 providing the number of hits, and so we -- we actually ended up
10 running additional searches on the hits that were a little
11 bit --

12 THE COURT: So when are you going to provide the
13 emails?

14 MS. KHACHATOURIAN: So we're going to start our
15 production on Monday, but we still are negotiating some of the
16 unmanageable hits because when they did get back to us, we had
17 run searches.

18 I'll try not to get too in the weeds on this, but our
19 email indicated that we ran searches within 15 and within ten
20 to see if we could narrow it, and we got a response on
21 September 1 that provided -- well, not so clear. Sorry -- that
22 provided other searches they wanted us to run to try to narrow
23 it.

24 So we ran those searches. We're about to tell them
25 what the responses are, but for the ones that were manageable,

1 we're beginning our production on Monday.

2 THE COURT: And --

3 MS. KHACHATOURIAN: And -- and just so the Court
4 knows --

5 THE COURT: -- when are you going to complete the
6 production?

7 MS. KHACHATOURIAN: Well, with respect to the
8 manageable ones, I -- I think we -- we will certainly complete
9 it before the custodians' depositions are taken. They're
10 staged currently. The depositions of these custodians are in
11 October.

12 The -- the deposition on September 29th is the
13 financial individual, and his email is not searched, and
14 they're going to ask him financial questions obviously, not --
15 he is not an email custodian.

16 So they will get the emails of the manageable hits
17 before the depositions, and we hope we can continue to work the
18 search counts out and then get it to them fairly quickly, but
19 our goal is to get it to them before the depositions.

20 And I would just let the Court know that with regard
21 to the parties and the custom in the case, right -- you know,
22 right before Alacritech's depositions were supposed to take
23 place, we found out that even though our opinion is they agreed
24 to search archives, they didn't, and so we got a whole bunch of
25 emails dumped on us right before these depositions.

1 So this is what happens in discovery, you know,
2 particularly towards the end. People are rushing to get it all
3 done.

4 THE COURT: I understand that. Let me hear from
5 Mr. Paunovich about what he is seeking on email.

6 MR. PAUNOVICH: On the email, respectfully, Your
7 Honor, we would ask that email be produced at least ten days
8 before the custodial depositions.

9 It's not reasonable to expect that we would get email
10 dumped on us -- some -- the -- the manageable email by the
11 deposition, that puts us in no position to take the deposition
12 if we're getting the email the day before or the day of the
13 deposition, and it sounds like from counsel's representations
14 that we would, in fact, be getting email after the depositions
15 for some unmanageable point.

16 Frankly, we got ourselves in this mess because we
17 didn't get many full participation sometime ago. All parties
18 in the amended DCO had a substantial completion date in June,
19 and we worked with everybody and tried to work with Cavium, but
20 we just couldn't get cooperation, so we're functioning as fast
21 as we can.

22 We've been very responsive, and we -- if they're
23 going to start on Monday, we've got our first deposition coming
24 up on the 29th. I think that they need to -- at least for that
25 one, we would like email that's relevant to the topics that we

1 don't know yet that that person's designated on to be produced
2 at least ten days before that. And in the subsequent
3 depositions of Cavium witnesses, which are occurring a couple
4 of days after that and so on and so forth, be produced ten days
5 before.

6 The notion that we have not done our job on email
7 both being irrelevant, but is also not true, and counsel,
8 including local, has participated in the --

9 THE COURT: And do you object to five days before for
10 the 30B6 designation of witnesses?

11 MR. PAUNOVICH: I'm glad you brought that up, Your
12 Honor.

13 The practice -- and there is email exchange amongst
14 Defendants -- that we exchange the week before. There has been
15 certain instances where all parties have, you know, revised a
16 few topics last minute, I'm sure as part of the preparation of
17 witnesses and maybe adding or subtracting a topic. This has
18 been on other Defendants as well as the one example that Ms.
19 Khachatourian brought up about --

20 THE COURT: Well, five business days is effectively a
21 week.

22 MR. PAUNOVICH: That would be fine with us. Five
23 business days.

24 THE COURT: All right. Then, Ms. Khachatourian, is
25 there any reason that you can articulate why the email from the

1 manageable hits should not be provided at least ten days before
2 the deposition of the custodian?

3 MS. KHACHATOURIAN: Your Honor, it just takes a lot
4 of time, so we're starting the production on Monday.

5 Dell, for example, produced their emails a week
6 before, not ten days before. Alacritech actually produced
7 subsequent emails right before deposition and produced
8 financials on the eve of deposition, so --

9 THE COURT: All right. I'm going to say --

10 MS. KHACHATOURIAN: -- ten is long.

11 THE COURT: I'm going to say seven days or one week
12 before, and --

13 MS. KHACHATOURIAN: Your Honor, but --

14 THE COURT: -- with respect to the designation of the
15 witnesses, it will be the same thing, five business days or one
16 week.

17 MS. KHACHATOURIAN: Your Honor, what I would say
18 about these deadlines is there are two custodians that we're
19 going to be producing that the hits were manageable, and that's
20 starting our production.

21 For the remainder of them, there are search terms
22 that are unmanageable, so until they engage with us to get it
23 down to a manageable amount, I can't complete those
24 productions.

25 THE COURT: Well, you can give them whatever is not

1 in dispute, and I'm hearing that they're willing to engage.

2 Why hasn't that occurred?

3 MS. KHACHATOURIAN: I don't know, Your Honor. We
4 were frankly surprised that they filed a motion to compel on
5 us. We have been trying to engage them for weeks.

6 THE COURT: Well, I can arrange for y'all to spend as
7 much time in this room engaging as you need to. Is that what
8 is lacking?

9 MS. KHACHATOURIAN: Your Honor, what I would say is I
10 think we should set a date next -- what's today? Today is
11 Thursday. By early next week where Megan Olesek of my office
12 has been handling most of the search term negotiations and
13 Michelle Clark of their office are ordered to complete a meet
14 and confer by -- on the remaining unmanageable terms. I think
15 that would be helpful.

16 THE COURT: All right. Any objection to that?

17 MR. PAUNOVICH: No, Your Honor. The only comment I
18 would make is we're in this sort of mushy world of what is
19 manageable, and what we found is that what everybody else in
20 the case, all Defendants and Alacritech, find to be manageable
21 is not viewed as manageable.

22 THE COURT: As long as this meet and confer on
23 manageability occurs by what date?

24 MR. PAUNOVICH: So I don't have Ms. Clark here
25 unfortunately, but I would say Monday or Tuesday next week will

1 be fine, or we'll meet and confer over the weekend. It doesn't
2 bother us. We want to get the email.

3 THE COURT: All right. Then --

4 MR. PAUNOVICH: In fact, why don't we make it
5 Saturday?

6 MS. KHACHATOURIAN: Your Honor, we're not going to --
7 come on. I mean --

8 THE COURT: What are you asking for, Ms.
9 Khachatourian?

10 MS. KHACHATOURIAN: Tuesday is fine. But to compel
11 someone to work a weekend when they have children and they have
12 all kinds of things going on --

13 THE COURT: That's all right. I'm --

14 MS. KHACHATOURIAN: -- is uncalled for.

15 THE COURT: By next Tuesday then.

16 MR. PAUNOVICH: And just to be clear, Your Honor, so
17 if it's Ms. Clark who is being compelled to do this, she's
18 defending, and all Alacritech's key witnesses are being deposed
19 next week.

20 THE COURT: I'm not ordering her to do it. I'm just
21 ordering the parties to do it.

22 MR. PAUNOVICH: Okay. Fair enough.

23 So it will likely be somebody else. I don't want
24 that to be a hold up. We will make somebody available to go
25 over this and work towards a manageable and agreeable set.

1 And if not, how would Your Honor recommend if there's
2 a -- remains to be a dispute, how would we present that to the
3 Court? We certainly doesn't want to trouble you, but I do
4 worry given the history.

5 THE COURT: Then I think you should email Mr. Paul.
6 Let him know. We'll set a hearing.

7 MR. PAUNOVICH: All right. Thank you, Your Honor.

8 MS. KHACHATOURIAN: Your Honor?

9 THE COURT: Yes.

10 MS. KHACHATOURIAN: I'd like to express some concern
11 about Michelle Clark's unavailability to engage in these
12 discussions because she's the person who has all the knowledge,
13 she's the person on the Alacritech side who has negotiated
14 everything with us, and to have someone else come in who
15 doesn't have that knowledge is going to slow the process down,
16 not accelerate it. It's going be like starting at square one.

17 THE COURT: Well, I -- I understand your request, and
18 if she's available, I expect she'll participate, but the
19 important thing to me is that the process moves forward.

20 MR. PAUNOVICH: And we're -- so the record is clear,
21 I know for a fact she could be available tomorrow, Saturday,
22 Sunday, so we're available. We're not unavailable.

23 MS. KHACHATOURIAN: All right. So then we can set it
24 for tomorrow, Your Honor. Michelle Clark and Megan Olesek will
25 meet and confer tomorrow.

1 THE COURT: All right.

2 MS. KHACHATOURIAN: Also, Your Honor, I'd like to ask
3 that the disclosure of topics for witnesses be reciprocal
4 because we have not gotten Alacritech's disclosures of topics
5 within five business days. They have -- they have fluctuated.

6 And, in addition, we've also received limitations on
7 the depositions in that, for example, one of the inventors who
8 was put up as a 30B6 witness was -- was only testifying to his
9 personal knowledge and not (inaudible.)

10 So I would just like to ask that we also get
11 identified within five business days of topics for the
12 remaining Alacritech witnesses.

13 THE COURT: I think that we're talking about
14 designated witnesses for the topics.

15 MS. KHACHATOURIAN: Uh-huh.

16 THE COURT: And I've directed that that be done at
17 least five days before the depositions are to occur, and that
18 would apply to both sides.

19 MS. KHACHATOURIAN: Thank you very much, Your Honor.

20 THE COURT: All right. Thank you. We are adjourned.

21 COURT SECURITY OFFICER: All rise.

22

23 (Hearing concluded.)

24

25

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

117

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and
correct transcript from the stenographic notes of the
proceedings in the above entitled matter to the best of my
ability.

Date: 9/19/17

Tammy L. Goolsby, CSR
Deputy Official Court Reporter
State of Texas No.: 3101
Expiration Date: 12/31/18

Tammy Goolsby, CSR
903-445-5355

31681

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

118Index: \$500..9th

\$	2	44 81:11
		47 5:17
\$500 79:22,24	2 70:7	48253 70:12
	2.0 70:12	
-	2010 36:23	5
--we've 99:18	2012 69:7	50 14:6
	2014 61:20	50910 70:23
1	2017 4:23 51:18 68:4	5706 53:4 79:2
1 21:21 37:14 103:3 108:21	20th 105:13,17 106:3	5708 46:24 48:2 50:14 53:4 79:2 92:7
1/24/2012 70:20	24 4:3	5709 44:15,16,17,20 46:22 48:1 50:9 51:7 53:4 59:14 63:20 79:2
100,000 108:7	241 22:23	5716 46:24 48:3 50:15 53:4 79:3
10k's 79:17,23	25th 11:22 63:23	57800S 72:11,17
10th 103:17,18	26160 70:9	57810S 72:12,17
1153 42:13	264 49:20	57840S 72:12,18
1156 42:13	27749 70:20	5th 12:12
11th 59:9 106:19	27th 51:18 78:20	
123,000 108:8	28 75:14	6
12th 4:7 12:15 90:7	28th 108:2	
131 54:12,19	29th 97:15 109:12 110:24	
133 54:12	2:16-393 3:6	60 71:4
135 35:23 58:4	2nd 42:13	61 8:8 99:5,11,17 102:15
13th 69:22 70:2,10,21	3	699 22:24
14 54:20		
14th 7:17	3 3:5	7
15 91:11 108:19	30 90:4	
15th 34:21 35:10,18,24 36:5, 8,12 37:12 38:4,5 40:25 42:20,21 44:13 49:8,21 52:12 54:12 58:22 62:13 75:19	30B6 104:9,17	7th 40:3,7
	30th 63:10	8
16th 41:1	33D 81:16	
170,000 108:7	354 68:16	86 105:20
17th 68:4	4	864 42:13
18 67:24	40 14:6	8th 12:13 73:11
182,000 108:8	4100 50:17 51:9,19 53:3 57:6 65:11 77:19	9
1st 33:23 36:10	41000 46:14 48:4 51:14,24 65:8 78:19 79:2 92:7	90 94:22
	43 81:10	9578 95:11
		9th 73:20

31682

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

119Index: A-TECH..appendix

A		
	addition 8:6 50:14 53:4 68:10 71:4 73:4	21:25 22:6 29:7 31:11 32:7 43:22 61:23 91:10 109:22
A-TECH 25:4,10,11,15,18 26:5 29:2,3,5,11,15	additional 5:20 16:1,9 20:2 21:3 22:13 34:13 45:3 49:5 71:23 86:25 88:8 90:19 92:2 96:25 97:1 108:10	Albert 18:6
absent 10:20	address 8:3 21:13 24:24 46:2 47:5 63:18 88:25	allegations 13:13
absolutely 9:8 18:17	addressing 32:15	allege 24:14
abundantly 43:13	adequate 30:2 32:1,4	alleged 5:25 13:7 22:5 24:7 37:16,24 69:13 86:13 88:25 89:5 104:18
acceleration 14:2,14	adequately 29:20	allegedly 90:15
accept 26:7,25 98:1	admission 35:13	alleging 15:19
accepted 21:4 74:18	admit 37:4 41:13	alphabet 14:21 20:15 23:1 58:25 59:7 60:24 65:3 83:22 91:11
access 15:23 26:14,15,16,19 64:25 68:4 100:14,25 101:19	admitting 55:9,13 83:4	ambiguous 38:20
accommodated 67:25	adopt 10:7	amenable 44:18
accomplish 9:17	adoption 10:8	amend 10:7 11:13 12:5 44:18 59:16,19 64:6
accounting 30:2	advance 6:25 19:23	amended 9:16,22 10:16 11:5 12:18 27:5 63:24 110:18
accurate 17:7 77:9	advanced 79:18	amendments 90:16
accuse 15:1 27:18 28:12	affect 5:8	amount 28:14 30:5 46:5 68:5, 18 80:1 108:3
accused 5:3,7,18,20 6:4 8:8 14:20 35:1 38:13,15,17 39:20 42:5,6,18 43:2 44:15,16,20 45:3 50:12 51:24 53:11,25 59:3,4,6 62:10 63:22 67:11 79:19 81:21 82:10,20 83:2 85:24 88:25 92:11,15	affecting 75:1	analysis 5:24 14:24 15:2
accusing 59:14	agent 26:24 28:25 29:3 31:11	analyzed 6:24
acknowledged 4:12	aggregate 93:17 94:19	analyzing 5:24
acknowledges 50:8	aggregated 94:22	and/or 35:1,3 36:23 55:6 59:23
acquainted 45:13	agree 7:18 11:3 27:15 42:14 45:2	Andrew 18:5 21:2 26:13,14, 15 27:4,6 30:13,19 31:10,13, 14,16
acquisitions 53:6	agreed 5:13 8:11 11:21 104:12 109:23	answering 35:12
acronym 61:19	agreeing 106:22 107:22	answers 15:22 26:8 29:13 42:22 44:22 62:9 64:9 78:22
acronyms 14:21 46:18 61:21,24	agreement 8:19 10:14,21 25:24 29:4 31:12 84:4 107:21	apologize 75:11 81:6 95:2,14 96:1
act 78:18	ahead 7:12 8:16,23 58:5 98:3	apparently 12:16 19:5 26:23 52:25 59:15 65:9 73:16 74:13
action 77:6	Alacritech 3:5,9 11:13,20 12:11,25 13:6,20,21 14:23 15:8,13,19 16:7,25 18:20 21:6 22:7,21 25:4,6,9,15,18 26:1,2, 4,19,21,22,23,24 27:22 28:18, 25 29:15 44:14,15 48:20 56:23 57:16 61:9 63:24 73:16 74:15 82:16 84:16 85:6 90:19 91:11 100:9,17 101:9 103:1 105:13,19 107:13	appearances 3:7
actual 10:25 13:12 17:2 67:7 72:14	Alacritech's 4:5 13:9,12 14:1,3,4,7,19 17:25 20:1	appeared 46:12
add 11:16 27:6 30:20 46:5 87:3 90:18 93:4 100:22		appears 15:8 31:14 78:20 93:9 99:10
added 11:14,25 83:8		appendix 13:19 16:24 17:4,6
adding 12:4		

31683

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

120Index: applicable..called

applicable 89:4	70:14 103:3,17 108:2	biggest 64:19
appreciative 99:18	author 70:22	bind 104:22
approach 33:3 57:3 73:8	avoid 7:13 15:8 39:7 93:20	bit 26:11 67:22 102:3 105:4 108:11
approximately 103:22	await 58:6	black 20:17 22:25
April 57:7 107:15	aware 13:14 18:17 24:20 46:9 107:5	blank 79:22
archives 109:24	awkward 8:9	boiler 87:12
areas 21:19		bold 68:12
argue 94:6	<hr/> B <hr/>	bottom 39:15 44:7 103:12
argued 54:13		bounds 102:16
argument 35:11 42:7 45:9,11 49:21 51:2 55:15 63:20 73:5 74:25 76:7	back 6:17 22:1 24:8 25:14 26:1 43:16,18 47:11 48:18 56:4 61:22 69:23 76:1 78:8 80:14,23 83:21 85:12 91:15 93:21 95:15 98:6 102:20 104:7 108:1,6,16	boxes 4:6 59:18 65:13 83:14 89:21 90:12,17
arguments 17:16 87:6,8	background 26:12 33:15,25	break 56:8 93:10
arrangement 29:4	backwards 73:24	Brian 40:14 57:10
articulated 66:17	bad 92:12	briefed 6:16 49:19
asks 31:22 80:17 92:9	ball 46:20	briefing 85:17
assert 42:11	bar 54:4 68:12	briefs 9:12
asserted 16:10 24:5 42:10	barrier 104:25	bring 72:20
assertion 43:22		brings 32:17
assertions 5:6	based 5:14 8:23 9:5 16:17 18:22 19:16 21:11 29:20 30:1 34:10 55:9 56:14,19 57:13,17 58:14,17 59:17 62:12 63:4,14, 16 64:11,18 65:18 69:24 76:25 77:15 82:13 88:3 89:9	broad 38:20
assigned 25:9,14	basic 8:7 29:8	Broadcom 53:5 64:3
assignment 25:23,24	basically 30:17 47:10 79:19 86:6 108:2	Broadcom's 100:17
assorted 103:10	basis 43:15 49:4 52:10,14 53:17,18 78:17	broader 79:9
assumed 66:22	Bates 15:15 19:2 23:18 70:9, 12,20,23 71:12 81:17,18	broadly 20:10 91:21
assumes 37:23	battle 33:16	brought 69:20 70:17
assuming 38:24 78:10	BCM 95:11	bulk 32:10 103:1
assure 57:11	bear 21:14 29:22	bunch 38:16 86:16 96:11 99:9 109:24
attach 15:14	beginning 69:2 109:1	burden 66:19
attached 13:4 15:11,15 16:20 32:22 43:21	behalf 3:9,15 29:7 104:23	burdening 7:13 93:20
attachment 17:3 20:5	believes 34:7 82:10 85:23	burdensome 34:3 83:10
attachments 49:22	bent 73:23	business 53:6 79:19,24 80:1
attack 28:23		busy 12:16
attempt 43:13		<hr/> C <hr/>
attempting 15:8		call 14:20 21:21 22:9 52:4 67:6 72:4 79:17 91:11
attention 44:6 69:20		called 13:23 15:7 78:7 96:5 97:19 107:19
attorneys 26:14		
August 11:22 63:23 68:3,4		

31684

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

121Index: calling..completion

calling 74:7	change 29:14 75:24	co-counsel 3:9
calls 20:15 57:1,8	changed 87:7 91:1	coalescing 41:8,9 60:25 66:4 78:2
care 25:1	charge 15:3,16 16:12 21:8 23:5,10 24:5 27:12 29:6 30:5	code 6:11 7:25 8:4,11,23 67:24,25 68:2,5,6,7,8 69:14, 15,16,18 72:25 73:5,12,13,21 88:23
carried 10:9 31:24	charged 31:7	coincidence 31:16 70:17
carries 35:19	chart 5:2,23 60:9	colleague 40:14 46:2 97:10
carry 4:16,22 9:14 12:17	charted 5:9,22 6:7	collected 107:18
case 3:6 5:18 6:11 7:23 11:16 16:17,18 22:16 33:19,20 34:15 35:7 46:13 53:25 57:4 61:9,10 64:2 73:2 84:19 85:25 87:4 88:9,18 92:11 103:2 106:15 107:4 109:21	charts 5:17	combination 34:23 55:4
catch 86:7	check 7:9 17:12,13 25:22	comment 7:10 35:21
categorical 48:11	chicken 49:14	common 19:11 24:13 25:17 28:22 32:19 33:6,10,22 34:16 37:11 39:19 45:6,17 75:13 80:16 82:2 85:16,22 88:16 89:1 91:20 96:3 98:8
categorically 44:10	Chris 106:18	communication 18:14,19 50:6
categories 71:8 97:22 102:7	Circuit 42:12	communications 13:5,10 20:11,25 21:8,11 24:4 30:4 104:15
Cavium 3:16 4:22 5:19,25 6:3 7:3,15,22 9:7,14,20 10:13 11:23,24 12:1 13:6 14:10,23, 25 15:1,4 18:6,20 21:9,24 22:6 23:19 24:5 25:12 27:18 28:12 33:18 34:23 36:11,13, 22 37:20,21,22 38:16,18,25 39:6 41:5,12,17 44:1,16 45:15,24 46:11 51:18 64:2 65:1,9 72:2,5 73:21 75:12,25 76:19 78:3,4,12 80:19 81:17, 18 82:25 84:5 85:20,23 86:5 88:12,13 89:3,10 91:21 93:22 94:6 98:16,21 100:9,17,20 101:3,4,19 102:25 103:6,7 110:19	circuitry 99:8,10	company 27:2 61:8,15 83:5 104:19,22,23
Cavium's 3:25 8:14 9:7 12:24 16:4,13 19:10 21:1,22 24:13,21 33:7 35:11,21 38:6, 22 43:19,21 44:1 73:8 78:5, 10,13 79:13 80:15 81:9 102:20 103:21 107:15	citation 42:12	company's 61:4 83:6 105:9
centered 74:25	cite 66:4	comparable 98:10,17 100:8, 11
Centurylink 3:5 12:7	cited 19:1,12	compel 12:25 17:3 30:12 32:8,18 48:8 55:16 74:5,12, 19,23 85:7 86:22 91:19 99:1,4 106:2
cetera 35:4 41:9,10 55:6 81:1 88:23 92:15,17 93:5 95:13 96:5	citing 62:1	compelled 71:1
chain 43:10,11,17	claim 18:18 31:14 48:11 52:23 72:12	compelling 74:13
chance 4:17 11:9 24:25 56:1 65:15 74:2,10 85:2 91:15 100:5 107:9	claimed 18:12 73:4	complain 70:25 71:4
	claims 15:5 16:10 60:12 65:5 67:6,7 93:13 94:10	complaining 4:11 68:11 69:13
	Claire 3:8	complaint 6:14 84:23
	clarification 9:24 10:6 85:22 105:3	complete 14:24 17:23 39:22 48:12 76:23 77:4 78:24 87:23 109:5,8
	clarified 41:4	completely 27:16
	clarify 56:15	completion 107:15,16 110:18
	clarifying 83:11	
	clarity 65:25	
	Clark 71:11	
	Claude 3:9	
	cleaned 38:4	
	clear 22:8,11,16 37:9 43:14 46:16 52:14 80:9 81:21 83:5 84:14 94:16 103:15 104:16 108:21	
	clerk 77:11 80:14	
	client 16:11 34:6 82:10 97:22, 23 100:16	

31685

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

122Index: compliant..creation

compliant 35:3	60:4,8 61:23 62:10,15,22	corroborated 24:16
complied 47:10	63:24 64:12,23 65:1,13 66:1, 3,6,9 67:3 81:20 83:15,16	corroborating 23:24
comprised 4:6	87:6,7,22 88:20 89:3,21,22	cost 68:19
compromise 59:13	90:1,3,12 104:17,18 105:2,8	counsel 3:7,23 6:24 8:15 18:2 20:15 21:1 24:24 35:11, 21 43:19 44:1 76:6,25 79:13 98:10
comptroller 69:6	context 23:7 32:3 81:7	counsel's 4:21 110:13
computer 50:23 69:14 77:12	continue 9:15 42:23 61:2 109:17	counsels 10:9
conceded 73:14	continued 22:12 26:2 53:8	counts 104:1 108:7 109:18
concern 6:19	continues 41:13 82:21	couple 3:21 42:8 45:6 96:9 102:21 105:16 106:16
conclusion 19:20	continuing 46:8	court 3:2,3,13,18,20 4:12,18 6:19 7:2,12,14 8:4 9:11,21 10:1,10,13,19,23,25 11:4,24 12:17,22,24 13:1,13 15:9,24 16:20 17:4,8,11,15,19 19:25 20:19 21:7,13,16 23:9,17 24:2,9,22 25:1,17 26:7,18 27:8,15,19 29:16 31:1,18,25 32:6,13,25 33:12,14 34:19 40:2,6,21 42:14 44:8 46:4 47:5,18,25 48:10,24 49:6,12, 15,20,24 50:20 51:1,14,23 52:5,7,15,21 53:14,20 54:4, 10,22 55:5,15,25 56:4,6,7,9, 10,21 57:11 58:3 59:21 60:6, 15,18 61:3 62:8,12,23 63:6,18 64:8,14 65:7,17 66:13 67:9,15 70:16 72:20 73:25 74:6,20,22, 24 75:16,18 76:21 77:6,14,15, 22 78:10 80:3,10 81:4,25 82:4,7,24 83:17,19 84:1,20 85:8,12 87:21 89:16,24 90:8, 24 91:1,3,13,15,18 92:23 93:20,24 94:13,25 95:8,24 96:7,12,15,23 97:2,21 98:1 100:7 101:2,7,21,22 102:17 105:10,23 106:8,10,12,21 107:2,9 108:12 109:2,3,5,20 110:4
concoction 42:18	contractual 31:11	
conducting 18:6	contrary 75:17	
confer 47:24 57:3 97:10	contrast 19:10	
conference 18:7	contributory 13:7,22 15:5 28:5	
conferred 8:14	control 18:1,10 19:8 30:22 31:15 38:22 98:14,22	
confers 48:17 49:19 52:2 98:19	convention 72:6	
confident 79:4	conventional 34:11	
confirm 11:17	conversation 18:22 19:7,23 21:22 53:21 58:3 68:13	
confirming 40:15	conversations 18:8,9 23:7, 16 25:13	
confused 78:8	convoyed 92:20	
connection 34:24 63:22	cooperating 73:21	
connectivity 35:3 79:18	cooperation 44:14 110:20	
consciously 33:19	cooperative 67:20	
consistent 78:13 84:2 87:17	cooperatively 93:22	
constitute 21:8	copies 32:23,25 33:5 60:19	
consulting 97:8	copy 17:13 60:21 75:12 76:12 95:7	
contained 82:8	cord 51:12	
contend 21:7	core 7:20	
contending 59:17 75:3	correct 10:12 17:10 20:23 23:12,21 24:6 51:15 56:16 64:18 97:25 103:16	Court's 5:13 7:17 11:2,15 56:15 69:20 86:7 87:18
content 12:3 40:15	correction 39:17	cover 70:8 78:16 98:5
contention 51:24 52:3 73:3	correctly 7:17 102:23	covering 22:22
contentions 3:25 4:6,14,16, 17,23 5:1,4,11,14 6:2,20,23 7:6,8,18,24 8:3,13 9:14,16,22 10:4,7,8,11,16 11:5,12,18,21, 23 12:1,3,7,9,15,18 13:15,16 31:23 32:1,2,3,4 46:20 47:11, 14,16 48:6,21 49:10,13,17 50:12 51:25 52:24 53:1,9 54:2,5 56:20 58:18 59:16,18	correspondence 43:21 46:23 59:8	create 72:4 102:5 created 72:3 creation 6:5

31686

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

123Index: cross-examine..differences

cross-examine 88:14	declaration 5:23 78:3	departments 90:10
cured 4:14	declaratory 5:5,6	depending 61:14
curious 16:4	defect 84:13	deponents 107:6
current 53:1,18	defects 39:17 66:25	depose 23:5,6 29:11
custodial 110:8	defend 84:6	deposed 19:22 30:20
custodian 108:4,8 109:15	Defendant 5:12 51:4,23 75:3 105:18	deposing 88:15
custodians 103:22 107:18 109:10	Defendant's 75:12	deposition 16:2,3,6,19 18:11,21 20:24,25 21:4 28:9 30:13,17 31:3,4,5 69:9 79:5, 11 93:19 97:14 102:21 104:10 106:2,17,19,20,22 107:1 109:12 110:11,13,23
custodians' 109:9	Defendants 5:13 6:13,15 7:15,21 8:10 10:4,5,15,20 45:23 56:22 64:22,24 86:6 88:20 89:1,10 94:5 99:18 100:14,24 102:25 103:1,4 107:13	depositions 9:6,8 18:11 19:24 74:13 77:3 78:15 80:4 102:20 103:9,14 104:7 105:6, 12 109:9,10,17,19,22,25 110:8,14
custody 17:25 18:10 19:8 30:22 31:15 38:22 98:14,22	deferred 49:3	derive 92:10
custom 109:21	deficiencies 68:6	derived 92:20
customary 107:3	deficient 56:22 58:18	derives 91:22
customer 68:16 95:12	define 14:3 60:22 76:14	describe 81:13
cut 56:13	defined 20:16 37:4,8 58:24 65:22 77:16 83:19	describes 19:1
<hr/>		
D		
<hr/>		
damages 14:9 94:10	definition 37:5 59:4,6 60:23 62:3,4,15,20 66:3,5,18,23 67:8 77:24 82:22	describing 15:10 19:13
data 48:15 50:18,24 78:8	definitions 17:2 58:23 60:24 61:24 66:2,7 76:9,13 78:2,6 80:24 91:2	description 19:15,16
databases 97:18	definitive 83:10 84:9	design 8:8 71:12 72:4,5,7,12, 14 99:10,12 100:1
date 12:4,18 21:4 36:8 68:4, 20 70:22 93:10,11 94:14,17, 20 95:13 107:15,16 110:18	delayed 90:12	designation 106:23
dates 21:2,3 74:17 93:9 102:23 106:2	deliberately 33:18	designer 71:5 72:22,23
day 4:9 7:16 12:14 33:22 61:14 65:2 93:18 107:6,7 110:12	Dell 11:18,19,20,25 12:6,11 44:15,17 50:12 63:22,24 64:3, 6,25 95:12	designers 72:16,17,18
days 43:12 68:21 69:6,25 90:4 93:7 104:12 105:16 106:16,22 107:1 110:7	Dell's 12:1 59:16	detail 19:12 46:6
DCO 110:18	demand 24:18	detailed 5:24 6:9 17:24 18:25 50:5
deadline 9:20	demanding 19:19	determine 29:23 31:5 77:3 78:15 79:11
deal 45:1 67:2 84:20	demonstrate 47:25 79:5	developer 72:22,23
dealing 55:16 84:21 91:10	demonstrated 102:2	development 104:12
deals 89:25	demonstratively 48:13	developments 4:3
dealt 86:5	denied 68:4	devices 5:8
debating 61:21	denies 75:25	difference 5:25 41:16,17
decided 33:19	deny 89:17	differences 5:7,24 8:1 85:23 86:14 87:1 88:25 89:6,9 99:7
deciding 62:9		

31687

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

124Index: differing..entered

differing 66:2,7	distinctions 6:18 85:23 86:25	efforts 42:17
difficult 31:14	district 42:14 87:21	egg 49:14
difficulties 77:20	docket 3:21	electronic 4:7
difficulty 32:17 34:3	document 19:17 40:2 44:6 51:21 62:1 66:4,8 70:10,19,22 72:1 99:11 102:4,11	Elmo 59:12 75:11 80:14 92:12,19
diligence 34:6 46:10	documentary 5:5	else's 64:21
diligent 102:11	documents 8:11,12,16,22,24 15:10,12,14,19,22 19:12 20:20 24:11 25:6,8,20 28:22 29:17,21 33:4 45:16 46:12,16 69:13,15,16 70:6,8 71:8,21,23 72:3,20,25 79:6,10 88:23 98:9 99:2,21,25 101:23 102:1,6	elucidate 52:13
direct 82:25	dollars 79:16 94:19	email 20:18 22:1,22,23,25 41:3 43:10,11,17,18,20 46:23 50:6 59:11 61:16 71:10,11 74:13 102:24 103:2,19,21,24 104:6 106:15,18 107:11,14,19 108:1,3,19 109:13,15 110:5,6, 7,9,10,12,14,25
directed 4:23 5:1 7:6 8:3 10:4 26:21 58:2 85:22,25 86:22 91:21	double 14:18	emailed 73:11
directing 26:22 36:17 44:6	doubting 74:6	emails 20:6,11 22:8,11,17,19, 21 23:4,8,13,15,16,17,25 24:15,16 25:13 27:11,18 57:10 103:3,6,8,13 107:12,18 108:13 109:16,25
disagree 4:21 65:21 77:7	drafted 55:9	Emanuel 26:13,19 31:13,16 71:11
disavow 26:25	dramatic 5:17	embedded 69:16
disclose 98:12 99:25	draw 31:18 47:24 93:14	embodying 25:24
disclosed 29:17 57:17 73:6 88:13	driver 72:23	emphasized 40:22
discloses 29:20	Duane 78:4	employed 26:23
disclosure 27:6	due 55:25 73:17 90:22 91:4	employee 18:6 21:6,22
disclosures 21:5 27:3,7	dump 38:15	employee's 18:9
discover 5:22 50:13	dumped 109:25 110:10	employees 29:24 61:4
discovered 34:6	Dunn 40:14 43:20 57:10 59:8	enable 36:24 80:21
discovery 27:16 29:17,19 30:8 39:4 42:16 45:22 46:10 52:9 57:17 66:25 67:19 71:17 73:22,24 77:4 78:13 84:8 85:14 91:10 96:18 101:14 103:19 104:2 110:1	dupe 70:14	end 8:20 9:19 12:5 45:21 65:2 96:3 110:2
discuss 16:13 22:7,9,21 67:17	dupes 70:4,18	ended 58:9 108:9
discussed 49:19 52:1 57:6 82:16	duplicative 70:1	ends 39:4
discussing 107:14	<hr/> E <hr/>	engage 58:12
discussion 28:17 60:11,12 67:18 103:19	earlier 52:24 79:1 88:14 90:5 92:19 99:3	engineer 61:7,14 72:3
discussions 18:15 20:22	earliest 3:24	engineering 71:19,23
dispelled 52:5	early 9:1 20:24 36:13 98:12	engineers 61:17,21 62:17,18 66:10 78:5,10,16 84:1,6 90:10 92:3
display 51:12	easy 68:25 98:7	engineers' 62:25 78:14
disprove 102:13	effect 5:17 11:7	entered 4:25
dispute 74:14 87:20 91:24	efficiency 11:2	
dissolved 25:16	effort 35:25	

31688

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

125Index: entire..folders

entire 45:4 53:24 79:21 81:9	explain 5:4 60:4 67:22 107:9	fast 51:18 110:20
entitled 84:10 94:10	explained 71:14 72:1	features 39:2 77:25
entity 25:4	explore 20:25 93:18 104:22	February 4:23 33:21 60:8
essence 10:8 19:19	express 22:13	Fed 42:13
essentially 13:4 31:22 44:24 61:18,19 65:24 67:23 102:3, 15	extended 103:24	feel 17:21 72:20
et al 3:5	extension 91:25	felt 64:15
ethernet 72:23 79:15,18,24	extensive 49:21	field 62:20
eve 69:9	extensively 8:14 49:20	fight 104:5
event 9:20	extent 6:17 16:9 37:23 38:21 63:5 89:4 92:23 93:23 98:20 99:24	fighting 7:22
events 10:25 19:14	extorted 44:25	figure 62:6
eventually 8:5	extremely 17:24	file 8:25 9:2,10 10:16,21 57:2, 9
evidence 5:6 6:10 14:17 23:9,13 24:19 25:7 30:3 37:23 49:25 50:20 51:8 78:4	eyes 20:8	filed 11:13 16:25 41:14 61:12 73:17 74:17 82:16 93:5 94:7, 23 101:10
evidenced 15:12 23:8,16 25:13 49:22	<hr/> F <hr/>	filing 25:15 50:16 94:11
evidentiary 5:24	face 22:11,23 31:14 76:22	fill 29:11
exact 77:24 78:2	facilities 34:25	final 100:4
examples 36:18 62:7 68:15 70:4,23 81:24 86:8,10,16,19, 23 87:9 99:17	facing 43:5	financial 29:4 69:3 96:13 97:1,14 109:13,14
excerpt 16:25 17:1	fact 7:5 27:15 28:18 31:19 39:22 57:16 61:16 65:22 69:4 72:7,9 77:1 83:11 88:21 101:8 105:15 110:14	financials 53:22 68:11,13,15, 22 69:5,10,11 79:14 81:19 91:21 92:3,6,25 96:2
excerpts 60:7	facts 11:1 13:21 15:6 16:9 27:23 29:10 37:23	find 16:3 19:13 28:9 34:9,12 38:8 47:19 48:1,2,3,4 59:22 102:9
exchanged 23:25 107:17	factually 49:1	fine 30:18 74:24 98:24 99:24 101:22 105:5
exchanges 20:6	fail 15:5	fingertips 75:10
excludes 81:23	fails 42:15	finish 91:16
excuse 38:11 42:2,3 96:3	failure 5:19	firm 78:5
executing 98:16	fair 23:9 24:2 30:21 57:19 74:3	Firmware 70:7,11
exhibit 95:3	fairly 85:15 109:18	fiscal 68:20 69:7
exist 26:2 48:9 85:23 92:23	fall 6:4	fix 60:16 66:25
exists 92:22	false 18:13 43:21 44:11 104:25	flip 52:11
expand 11:16	families 6:5	floor 4:6
expect 6:15 93:21 110:9	family 6:9	focus 27:8 36:19 37:2 74:1,9 80:14
expert 5:23 12:16 68:2 88:4, 19 98:12 101:11,14	farther 19:10	fodder 80:4
expert's 88:11	fashion 47:19	folders 69:17
experts 62:17,19 68:1 87:24 88:7 89:11 90:9,14		

31689

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

126Index: folks..historical

folks 61:18 106:15**footnote** 60:22**forget** 76:12**formal** 10:6 12:5 72:2,5**formally** 41:22**forward** 88:7**fought** 33:16**found** 47:13 56:21 81:17
109:23**framework** 89:15**frankly** 4:10 6:11 8:10 13:11
24:16 31:25 56:16 57:1 60:21
65:15 66:17 68:14 82:22
110:16**Friday** 12:14 106:20**fringe** 60:13**front** 16:23 17:16 25:20 29:13
32:21 34:17 36:20 38:14
40:19 47:20 75:16**full** 17:1,13 56:23 105:21
107:7 110:17**fully** 15:25 29:2 66:17**fulsome** 8:17 16:7 17:24
18:25 21:18**function** 70:11 88:21**functionalities** 20:16 35:9
36:25 37:3,5,6,13 38:18 39:3
41:8,10 42:5 43:3,4,8 48:16
50:11 52:23 53:25 59:3 63:5
64:12 65:19 67:5,8 71:7 77:20
79:8 80:7,22,23 81:3,15
82:11,13 83:2,7,19 88:21
91:23 92:2**functionality** 35:2,3 50:19
55:7 58:24 59:5,24 60:10,14,
23 61:25 63:1 64:16,17 76:10,
15,16 77:16 80:25 81:1 88:19
91:12 104:24**functioning** 20:15 110:20**functions** 34:14 37:17

G

gate 35:6**gather** 6:10 55:24 56:1**gathered** 88:13**gathering** 71:24**gave** 5:1 8:12 19:5 70:15
74:2,17 90:5 95:22 103:23**general** 42:15**generated** 69:7**generic** 59:1 78:1**give** 8:4,11,15 11:9 24:24
33:25 36:18 55:23 56:1 66:7
73:7,22 74:10 77:12 85:2
91:15 92:6 100:5 105:4 107:9**giving** 69:1 84:7 86:8 87:13**goal** 109:19**good** 3:3,8,11,12,13,15,19,20
4:19 28:9 32:9 87:3**grant** 91:3**great** 47:13 74:15 80:3**grounds** 38:17 71:20**group** 95:12**GSC** 41:9**guess** 3:25 6:19,22 11:6,7
15:17 27:8 29:5 51:14 76:21
78:21 84:20 94:2 99:15**guidance** 5:13**guide** 51:22 72:4,16,17,18,23
99:12 100:1**guides** 8:8 71:5,12 72:7,13,
15,21,22,23 99:10**guilty** 87:13**guy** 61:19**gymnastics** 62:5 66:11

H

half 33:23 34:1 39:3 107:6**hand** 87:11**handed** 76:12 80:15**handful** 76:17**handle** 32:10**hands** 40:1**handy** 95:3,4**hang** 41:20**happen** 12:13,14**happened** 28:25 40:18 44:12
73:14,19 107:13**happy** 13:1 33:1 59:19 60:19
95:16**hardware** 99:7,9**Harnois** 18:6,9 19:5 20:6
22:1,20,21 23:1,6,11 25:12**Harnois'** 20:24**Harrer** 106:19**hat** 41:20**havoc** 41:20**head** 18:25**heads** 71:19,22**hear** 7:5,20 31:19 55:19 56:4
74:15 82:1 84:23 85:1 110:4**heard** 11:9 28:8 29:21 30:2
34:21 65:11,16 75:2**hearing** 3:4 6:22,25 7:2,20
9:19 35:18,24 40:1 48:10
49:9,21 52:11 53:17 54:12
55:11 57:25 58:22 67:25
69:21 74:7 75:19 76:3**heart** 5:10 34:14**Hein** 14:22 16:15 18:5 19:4
20:1 21:2,23 22:2,5,19 23:6,
11 25:4,10 26:13,15 27:4,6,24
28:24 29:12 30:19 31:6,10,13,
14,17**Hein's** 16:2 18:8 23:25 26:14
30:13**held** 44:24**helpful** 17:16 26:12 27:13
32:24 60:20**Henry** 3:8,14**hiding** 46:19**high** 22:16 79:7**highlighted** 21:20 72:11**Hilda** 70:19**historical** 53:1

31690

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

127Index: historically..infringement

historically 45:13	hypothetical 94:3	included 5:22 11:23 46:19 52:6 63:21 64:8,16
hit 18:24 104:1 108:7		
hits 107:20,24 108:4,9,10,16 109:16	I	includes 19:4,5,6 49:11
hold 50:14 86:8 87:18	i.e. 52:23 81:14 94:20	including 7:15 12:4 19:6 37:24 61:4 67:24
hole 96:1	idea 3:23 61:7 69:3 71:6 72:24 73:7,21 107:6	incomplete 48:14 51:3
homework 72:10	identification 19:5 27:13 41:5 49:5 54:17 75:24 81:14 83:6 86:9 104:10	inconsistent 31:4
Honestly 90:4 106:1		incorrect 49:1
Honor 3:8,15,17 4:2,12,19,25 7:11,24 9:23 10:22,24 11:10, 19 12:20 13:2 15:13,20 16:24 17:6,18,20,22 18:24 19:9 21:15,18 23:22 24:23 26:10, 11 27:10 28:16 30:10 31:9 32:5,9,12,15,21 33:2,4,13,25 34:9,17 35:10,16,19,25 36:12, 16,17,21 37:4,10,18,22 38:6, 8,11,14 39:4,8,9,10,14,22,25 40:1,2,8,23,24 41:2,16,18 42:1,9,13,24 43:3 44:4,21,22 45:14,15,19,20 46:1,8 47:22 50:4 51:10,17 53:20 54:9,11, 13,14,16 55:4,12,22 56:5,12 57:20,24 58:5,21 60:2 61:6, 13,16,22 62:11 63:3,9,23 64:10,18 65:5,10,22,23 66:16, 18,24 67:16 70:21 71:16 72:14 74:4,11,21 75:8 76:12 77:10 79:2,4 80:5 81:6 82:1,6, 12,15 83:13,21 84:11 85:4,14 88:6 89:19 90:6,22 91:7,17,21 94:15 95:6,18,25 96:14,20 97:5 98:4 100:8 101:6,25 102:18 105:11 106:25 110:7	identified 5:3,18,25 8:1 18:13 19:2 20:8,12 21:5 22:12,22 23:18 24:11 29:2 36:24 37:3,5,6 38:18 39:2 43:3,4,8 46:14,21 48:4,19,20 49:13 50:1,11 52:24 53:10 54:1,24 62:14 63:19 64:1,2,3 65:8 80:7,22,23 81:22 83:1,2, 7,25 87:15 89:1,5,10 91:22 96:22 99:15 100:11,19 101:17	index 102:5
Honor's 5:10 8:2 11:20 12:10 91:25	identifiers 36:22 38:19 80:19	indication 52:9 78:23
hook 50:23	identifies 23:1 49:25	individual 93:11 95:15 109:13
hope 35:19 52:5 90:17 99:19 109:17	identify 5:20 6:18 20:5,13 27:20 34:23 36:21 37:16 39:1 43:7 45:2,15 48:18 49:9,12 52:22,25 54:6,25 55:3 67:7 71:12 78:6 80:6,18 81:16,23 87:2 88:9 92:1,24 94:20 96:16,25 98:9,16,17 99:5,19 101:11 105:4 106:6	individuals 18:10,14,15
hoping 29:11	identifying 41:12 49:16 79:25 86:13 96:3 106:16	induced 24:7 93:12
hostage 44:24	identity 17:13 29:22 54:23	inducement 13:7,22 15:4 28:4
hours 4:4,8 12:10	ignores 39:22 44:12	indulge 57:20
housekeeping 102:19	ignoring 36:9,10	indulgence 56:15
HP 61:17	Iman 73:11	industry 67:13
hundred 79:15 94:19	implement 41:7 91:22	industry-wide 84:4
hundreds 103:2	implicit 35:13	infected 80:8
	important 40:12 68:9 99:6	infects 39:18 52:19
	imported 36:23 41:6 80:20	inferences 31:19
	impose 77:11 80:13	Infiniband 20:17 22:18 35:2 37:7 41:10 46:19 50:19
	improper 48:24	informally 73:10
	inclined 82:24	information 7:23 8:8 13:8 16:1,5,19 17:25 24:10 28:6,18 29:18,25 30:7,15,18,24 31:2, 3,7,22 33:16 34:10,13 38:21 41:19 45:16,23,25 47:10,24 48:7 55:21 57:12 63:7,13,16 64:4,25 67:21 68:24 69:4,8, 19,22 71:1,14 73:18,24 84:18 88:12 93:2,8,23 95:22 97:1,6, 19 99:9,23,25
	include 37:5 44:19 59:16,19 64:7 75:22 76:13 83:2,7	informed 12:15
		infringe 39:18 55:1 58:11,12 59:6 61:11 62:13 66:23 94:12
		infringed 64:15
		infringement 3:25 4:5,13 5:8 13:7,8,13,16,22 14:17,24 15:1,2,3,5,16 16:12 21:8 23:5,

31691

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

128Index: infringes..kind

<p>10,14 24:5,8 27:12,18 28:4,5, 13,15,19 29:6 30:5 31:22 35:13 37:25 38:3,24 46:20 48:20 55:10,14 56:20 57:14, 18 58:18,19 59:16,25 60:4,8 61:23 62:21 64:11 66:1,2,6,9, 20 79:21 80:21 81:19 83:4,15 85:24 88:22 89:21,22,25 93:12 105:8</p> <p>infringes 59:17 63:2 75:25</p> <p>infringing 14:20 34:7 35:2,16 36:1,7 37:6,12,15,21 39:23 40:9,11,17,19 41:13,21 42:1, 3,5,19 43:4,14,23 44:2,9 49:11 50:10,12 52:4,19,23 53:12,15 55:6 56:14 57:12,21, 24 59:5,10 60:9,14 61:25 63:8,14 67:1,4 75:1,20,22 76:4 80:8 81:2 82:21 84:14</p> <p>initial 21:5 27:3,5,6</p> <p>initially 101:9</p> <p>inquired 97:21</p> <p>inspection 73:13</p> <p>inspections 69:24</p> <p>instance 19:19 59:24 99:13</p> <p>instant 49:23</p> <p>instruct 16:16 18:21</p> <p>instructions 5:2</p> <p>instrument 92:15</p> <p>instrumentalities 5:3 35:1 38:14,15 39:20 42:6,18 43:2 59:4,6 82:20 92:16</p> <p>instruments 38:18</p> <p>Intel 4:13 5:1,3,11 8:2 11:13, 14 12:5 47:3 56:22 62:1,2</p> <p>Intel's 4:25 11:19 62:3</p> <p>Intel.ark 47:4</p> <p>intend 20:24</p> <p>intending 21:4</p> <p>intent 94:12</p> <p>interceded 33:19</p> <p>interchangeably 65:4</p> <p>interest 22:13 28:22</p>	<p>Interface 70:7,11,19</p> <p>interlineated 40:20</p> <p>internal 81:14</p> <p>internet 34:11 46:13,17 50:24</p> <p>interrogatories 8:7 13:3 16:5 17:2 33:6,8,22,24 34:12, 16 36:11,14,15,17 37:10,11 38:7 39:1 41:25 42:10,16,22 44:11,23 45:5,6,17 48:8 52:4 56:19,24 58:20,21 59:10 62:24 66:22 67:1,2 75:14 82:9 84:12,24 85:2,21 87:19 91:6</p> <p>interrogatories' 39:17</p> <p>interrogatory 6:3 8:2 12:25 13:16,18 15:7,10 16:21 17:8, 21,22 18:16 19:3,11 24:12,14, 21,24 26:17,21 27:9 30:7,16 31:20,21 32:4,19,20 34:16,22 35:12,15 36:6,9,10,19,20 37:19,23 38:2,10,17 39:18 40:16 41:21 42:4,25 43:1,22 44:3,10,19,23 45:4,5,17 47:6, 8,15,23 48:1 49:11 50:2,9 52:16 53:10 54:21 55:2,8 57:24 58:1,10 59:22 73:15 75:15,21 76:2,24 80:7,16,17 81:8,9,13 82:2,8,20,25 83:20 84:22 85:16,17,22,25 86:13, 15,24 87:1 88:6,16 89:2,17, 18,20 91:4,20 92:1,5,9 96:4, 16 97:19 98:8 101:10</p> <p>intervene 33:20</p> <p>intervened 11:24</p> <p>intervenee 94:8</p> <p>interview 88:11</p> <p>investigate 22:2</p> <p>investigating 50:15</p> <p>investigation 21:25</p> <p>invoke 81:16</p> <p>involve 90:20</p> <p>involves 13:17</p> <p>issue 7:14,19 13:3 18:2,3 22:16 23:2 31:8 39:18 40:4 46:6 49:23 52:3 57:22 74:1,3, 4 75:1,7 76:3 77:4 83:22 84:24 85:2,10,18 86:2,3,5,20 88:17 92:5,9,25 95:17 96:2,7,</p>	<p>13 97:3 106:4 107:5</p> <p>issued 78:20 90:6</p> <p>issues 4:11 8:15 9:15,21 10:9 15:16 46:6 50:5 53:23 56:23 86:21 90:21 93:11,21 95:20 100:4,6 102:18 104:20</p> <p>items 102:19</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>Joe 3:10 4:19</p> <p>join 4:8</p> <p>joined 3:9 11:19</p> <p>Judge 39:21</p> <p>judgment 30:5</p> <p>July 7:17 41:1 68:3 90:6 103:18 105:13,17 106:3</p> <p>June 33:23 34:21 35:10,18,24 36:5,8,10,12,23 37:12,14 38:4,5 40:25 42:20,21 44:13 46:11 49:8,21 51:18 52:12 54:12 58:22 62:13 63:10 65:9 68:3 69:2,19,22 70:2,10,21 73:11,20 75:19 78:20 107:16 110:18</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>Karineh 3:16</p> <p>key 13:20 29:10,16</p> <p>Khachatourian 3:16,19 4:2, 18 10:24 11:10 12:20,23 13:2 15:9,13,25 16:24 17:6,10,12, 18 26:11,20 27:10,17,20 30:10 31:9,21 32:5 50:8 53:13,21 54:14,19,23 55:19, 22 56:3,5,11,12 58:6 60:2,7, 16,19 61:6 62:11 63:3,7,23 64:10,18 65:10,18 66:15 67:10,16 74:4,11 77:9,13 82:5,12 83:13,18,21 84:11 85:4,9 89:16,19 90:4,9,25 91:7,14,17 92:18 95:2,6,9,18, 21 96:12,14,20,24 97:5,25 99:2,15 100:5,8 101:6,8,25 105:11,25 106:9,11,14,25 107:3,12 108:14 109:3,7</p> <p>kind 83:15 97:16</p>
--	---	--

31692

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

129Index: kinds..members

kinds 71:5	light 5:13	36:22 37:20,21 38:9 41:1,6,14
knew 6:23 7:16 74:14 90:13	likes 45:20	42:9,22 43:13 53:17 55:4
knowledge 6:14 31:7 88:1 94:11 105:9	limit 47:18 72:21 75:3 80:10 87:14 88:3	68:12,25 76:1,2,6 80:19 94:22,23 107:21
<hr/> L <hr/>	limitation 37:24 48:25 51:5	mail 4:7
Labor 12:14	limited 34:10	maintenance 92:14 97:4
lacking 13:23 47:7	limits 16:22	make 8:16 15:3 16:12 29:9 32:22 34:24 37:9 41:16,17 42:1 45:10 67:1 70:18 74:1 75:25 79:23 81:7 84:14 85:10 93:22 98:23 101:23 104:15
laid 93:24 103:10	lines 67:24 71:20	makes 83:5
language 38:16 55:3 76:4,23 78:9 83:3	Link 51:19	making 39:11
large 58:25 59:1 60:25 77:25 78:1,7	list 47:15 71:13	manageable 108:3,25 109:8, 16 110:10
largest 96:10	listening 17:16	manipulate 93:4
Lastly 93:1	lists 82:9	manner 20:2 69:12
late 12:4 65:9 103:21	literally 7:16,22 76:2 81:20 99:22	March 13:14
latest 33:11 42:2,3,18	litigate 9:16	margin 68:19
law 42:12	litigation 14:12 51:21 67:13 101:18,20	margins 95:13
lawsuit 11:25 94:23	live 30:16	marked 75:12
lawyers 87:12	Lo 106:18	marketing 79:7
lead 3:6 57:1,8	local 53:21 57:1,8	material 5:7 18:13 85:24 104:8
learn 53:6	locate 66:16	materially 88:21
learned 50:16 54:7	log 15:18 18:18,19 28:21	matter 30:6 59:13
leave 10:11,17,21 11:8 12:18 97:2	long 33:16 55:23 57:8 68:16 71:13 72:16 84:6 103:18	matters 74:1 98:3
left 71:3 95:11	looked 11:11 55:2 57:24 99:8,21	meaning 61:5
legal 19:20	lost 57:16	meaningful 103:5
lens 105:1	lot 14:21 55:24 56:14,16 66:10 67:16,18 71:24 72:11 90:4,11 108:4	meaningfully 103:19
letter 40:3,13	LRO 61:11 67:6	means 14:15 45:6 61:7 72:21 88:7
letting 56:15	LSO 14:20 20:17 22:17 35:2 37:7 41:8,10 45:12 46:18 50:18 55:6 58:24 59:5,24 61:5 64:16 76:10,15,18 77:16 80:25 104:24	meant 25:25 103:17
level 22:17 26:1 79:7	lump 98:6,25	meet 47:23 48:17 49:19 52:1 57:3 97:10 98:19
license 14:10 22:6,20 23:2,15 24:18 28:13 54:4 68:12 98:20 100:17,21 101:4,20	lying 54:5	meeting 66:11 67:12
licenses 98:10,14,23 100:8, 12,15,17,18,19,23 101:4,11, 18	<hr/> M <hr/>	Megan 97:10
licensing 13:5 14:24 15:17 26:24 28:24 29:3 31:11 100:10	made 34:24 35:11,18,20,21	Melissa 3:16
		member 25:10
		members 26:5

Tammy Goolsby, CSR
903-445-5355

31694

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

131Index: objected..people

76:23	opportunity 11:15 13:11 53:14 75:9	participation 103:5 110:17
objected 65:23,24 103:25	oppose 86:21	parties 5:2 18:4,5,22 19:22 45:20 88:8 98:16 107:23 109:21 110:17
objecting 105:23	opposed 98:6	parties' 34:10
objection 10:15 37:21 38:1,9 42:11 48:24 55:20 58:16 91:11	opposite 72:9	partner 40:13 71:11
objectionable 47:20 80:11	opposition 10:2 16:25 30:11 39:12,13 45:10,11 52:18 53:16	party 18:5,19 21:1,23 26:22 28:6,10,11 32:20 33:8,10,24 36:11,17 37:10,14 38:7 41:25 42:15,25 43:1 44:11 45:5,17, 24 58:16 75:21 80:7,16 81:9 82:2,9 84:16 85:6 87:25 91:25 94:8 96:4 98:21 101:4
objections 12:3 37:20 42:9, 17,22 44:18 63:13 65:23 76:25 81:9,11	oral 11:7 23:19	party's 89:5
objects 37:22 38:16 91:12	order 4:12,25 5:10,15 7:17 8:2,4 10:4 11:15,21 12:10 45:14 55:8 73:13 80:6 83:15 84:25 90:6 91:25 92:23 96:21 104:2	passed 22:14
obligation 30:9 71:18 84:2,8	ordinary 61:4	past 98:11
obligations 96:24 104:2	original 7:6 9:13 22:3 62:21 64:9 76:13	patent 14:1,3,4,8,10 20:1 22:24 27:20 60:11,12 65:5 98:13 100:10
obstacles 73:7	outlined 108:2	patented 21:25
occasions 41:4 100:9	overlooked 99:16	patents 14:1,5,6,12,19 15:18 16:11,12 19:6 20:3,8,21 22:2, 7,8,9,21 24:5 25:6,9,11,14,23 27:13 28:14 29:1,6,8 61:12 65:4 94:11 100:22
occur 19:24 24:17	overly 38:20	Patents-in-suit 14:5 20:13, 18 22:23 28:13,17
occurred 4:3 11:1 58:3	overwhelming 103:1	Patil 70:20
October 20:24 109:11	owned 25:11	Paunovich 3:10,12 4:19,20 6:19 7:10,13 9:23 10:2,12,18, 22 11:1 17:20 20:4,23 21:10, 14,17 23:12,21 24:6,13,23 25:5,19 26:10 28:8 32:10 33:3 46:2,5 47:5,8,22 48:13 49:2,8, 18 50:3,22 51:1,10,15,25 52:11,22 57:7 68:12 74:21,25 75:8,17 76:21 77:10,23 78:25 80:5,13 81:5 82:1,6,19 85:14 87:21 88:5 91:18,20 94:1,15 95:2,10,19,25 96:9 98:3,4 102:18 110:5,6
offer 24:10,15,17,18,19 28:13 29:9 38:19 59:13 64:7 75:7 81:15	ownership 25:17	pause 15:3
offered 14:10,22 21:2 24:20 36:23 64:6 77:19 80:20 107:6	<hr/> P <hr/>	PDF 93:3
offering 51:3	pages 19:12 43:25 68:16 70:8	pending 4:22 5:12 8:7
offerings 53:2	painted 67:19	people 29:6,13 34:1 62:20 110:2
offers 13:5	painting 71:17	
office 68:2	paper 32:25 60:21	
officer 3:2 53:20 54:4 56:7,9	papers 52:17 103:11,16	
offload 58:25 59:1,2 61:1 77:25 78:1,7 91:12	paragraph 13:25 14:16 18:4 19:13 44:7 81:10,11	
Olesek 97:10	paragraphs 18:3	
omnibus 22:3	parrot 47:11	
onslaught 42:23	part 5:4,22 7:19 16:11 21:20 49:23,24 51:25 53:5,9 74:25 82:17 87:9 88:24 98:25	
opaque 47:3	participate 103:18	
open 40:25	participated 21:23	
opening 74:25		
operations 34:25		
opinion 109:23		
opinions 88:8 98:12		

31695

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

132Index: people's..productions

people's 83:23	85:18 88:6 91:8 93:14 95:8	preserved 38:1
percent 94:22	99:4 105:3 110:15	preserving 63:13
Perfect 51:13	pointed 18:2 42:9	presumes 28:20
perform 37:17	pointing 27:11 28:10	pretty 71:13
performance 77:25	points 42:8	preview 16:16
perfunctory 90:16	popped 46:17	previously 53:11 76:8
period 25:10 41:7 79:16,20, 21 80:21 90:2 94:10 103:24	port 89:6	primarily 6:20
permission 33:3	portfolio 14:1,2,3,4,8,10,20 15:18 16:12 20:1,10 21:25 22:4,6,10 27:21	primary 91:24
permitted 30:14	portion 42:25 43:2 44:5 58:4 76:1 79:25 81:12	print 4:9 61:18
persevere 73:7	position 4:1,10 8:9 19:21 23:13 24:3,7 35:14 41:18 44:2 61:3,6 67:3 78:12 83:6 84:6 88:3 89:9,11 98:19 104:6 110:11	prior 25:15 54:12 58:22 69:21 86:7 87:18 94:10
persistently 40:10	positions 39:8 86:1,17 87:23 105:24	priv 15:18
persists 39:11	possession 13:9,24 17:25 18:10 19:8 20:12 28:1,2 30:22 31:15 38:22 72:15 98:14,22	privilege 16:17 18:12,18,19, 23 28:21
person 28:24 34:9 63:15 97:15	possibly 19:18 71:25	privileged 15:19 18:20
personal 18:8,9	post-haste 45:15	privy 64:24
personally 53:22 70:5	posture 10:3	problem 32:2 37:15,16 38:2, 13,23 39:10 40:11 42:19 43:5 62:8 64:19 69:25 76:21
persons 61:3	Powerpoint 28:14	problems 38:12
pertinent 15:7 57:23	practice 8:21 34:13 35:8 36:24 37:13 39:2 80:21 104:8 106:14	proceed 3:17 4:15 74:22
phrase 35:15 37:3,4 42:5 43:3	practices 43:8	process 58:12 72:2,5
picked 70:18	practicing 35:1	produce 8:22 9:1 38:25 41:19 70:2,13,16 71:5 92:24 93:23 98:17 103:6 105:14 108:3
picture 67:19 71:17	pre-lawsuit 13:5	produced 18:16 19:2 25:6 27:18 45:23 46:13 51:21 53:22 67:24 68:16 69:8,14,21 70:2 72:1,19 78:17 93:2,3,4 99:17 100:2,13,15,25 101:5, 18,20 102:4,6,11 103:1,2 110:7
piecemeal 108:5	pre-suit 23:10	product 5:18 6:4,5 34:23 44:15,16,20 45:2,3 47:4 48:1, 2,4,14 49:3 50:10 51:20 52:4 53:2 55:4 59:15 62:2 71:20 78:6 80:6 89:15 93:16 94:3,18 95:11
pieces 93:1	predictable 27:16	production 9:5 42:16 70:10, 21 74:13 76:25 93:6 99:1,8 102:25 108:15 109:1,6
place 55:11 109:23	prejudice 9:8	productions 6:10 99:20
Plaintiff 24:4 30:6 51:4 74:10 85:1	premature 101:14	
Plaintiff's 33:6,7 49:16	preparing 69:10	
plan 31:10	present 36:24	
plane 4:8	presentation 19:4 20:5,7,9 22:4 55:23	
plate 87:12	preserve 86:9 87:15	
platform 79:18		
plug 51:12		
pocus 32:18		
point 6:14 9:12,24 23:21 24:3,24 25:5 26:20 29:16 40:23 41:23,24 49:24 51:5 65:11 66:19 70:18,24 71:22 73:25 77:5 79:22 82:15,22		

31696

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

133Index: products..refer

products 5:7,9,20 6:1,6 8:9 11:14,16,24,25 12:1,4 16:13 34:7,8,10,13,24 35:6,8 36:22 37:12,16 38:18 39:1 41:5,12 43:7 46:10,14,17,21,22 47:1, 13 48:20 49:10,12 50:1,17 51:6,16,19,24 53:5,24 54:1,7, 17,18,20,24 55:1 58:11 62:9, 13,14 63:2,19,25 64:1,5 67:11 68:10 71:4,12 72:8,11,15 75:24 76:16 79:6,15,19,24 80:1,19 81:15,17,18,19 82:10 83:1,7 85:24 86:14 88:25 89:13 91:22 92:2,4,6,11,17,21 96:2,16,19,21,25 99:5,7,9,11 102:15 104:17	pull 50:22,24 65:23 purchased 53:5 purpose 7:7 25:25 purposes 88:18,22 pursuing 61:9 pushing 38:25 put 8:9 13:21 23:14 37:22 42:21 51:23 52:17 54:14 57:5 59:12 75:11 77:23 78:22 82:25 83:3 84:17,21 92:18 99:3 104:25 105:1 106:6 puts 110:11 putting 5:17 13:9 79:11 93:8	ran 107:18 108:19,24 range 81:17,18 reach 8:18 reached 5:12 6:24 25:12 107:25 reaching 7:14 read 21:11 39:14 41:3 42:25 43:2 57:22 58:4 66:8,9 69:1 79:1 90:15,21 readily 42:14 reading 54:24 106:5 reads 77:24 ready 3:17 103:8 real 52:8 reason 18:18 35:11,14 52:18 55:12 67:10 88:1 97:15 105:15 reasonable 73:24 90:2 102:10 110:9 reasons 87:13 rebranded 53:7 rebut 82:19 86:21 recall 7:25 11:19 recalling 7:16 receive 13:19 41:9 60:25 61:1 66:3 71:1 78:1,2 received 4:5 22:3 58:7 68:10 100:1 recent 33:5 46:16 51:17 68:23 recently 50:17 91:5 94:23 recess 56:1,6 recommendation 4:21 record 3:4,7 35:19 36:2 39:23,24 40:9,25 41:2,22 51:14 56:16 77:5 79:1 84:13 103:12,15 recounted 9:12 recounts 40:4 reduce 104:3 refer 76:10 81:13,16
program 100:10 promise 74:10 100:3 promptly 5:10 69:12 97:17 104:2 proof 43:9,10 properly 80:12 propounded 66:24 90:18 105:20 prove 13:21 provide 14:23 15:2 20:20 23:7 27:25 30:15,24,25 33:4 34:25 41:7 45:16,25 49:5 50:18 60:19,21,24 67:8 70:24 73:24 83:15 84:15 86:2,23 88:2 96:18 97:1,12,13 102:15 104:13 105:21 106:23,25 108:12 provided 15:23 17:1,24 19:12,16 21:3 22:5 23:19 30:18 34:2 47:6 63:10,11,17 65:14,19 67:20 68:7,23 69:2, 5,11 71:2 73:20 75:19 77:3 84:18 85:21 87:6,9,10 92:17 93:10 97:11,18 101:24 103:16,20,23 105:20 108:21, 22 providing 47:15 58:14 108:9 PTAB 14:6 public 48:19 publication 51:18 publicized 65:9 publicly 81:23	Q QLOGIC 13:6 44:17 61:17,19 72:6 qualification 36:4 quantity 68:18 95:13 quarter 19:15 68:23 question 15:21 26:8,18 34:3 55:17 64:14 73:9 79:22 81:6 82:5 101:2 questions 15:22 16:15 26:16 27:24 29:8 34:2,5 63:4 74:9 84:12 102:7 109:14 queue 103:6 quick 21:17 85:16 96:10 quickly 98:5 109:18 Quinn 26:13,19 31:13,16 65:11 71:10 73:11 106:18 quote 42:14 52:4 76:1 R rabbit 96:1 race 45:22 raise 32:2 raised 76:7,8 79:13 86:22 89:7 107:8 raising 10:9	

31697

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

134Index: reference..round

reference 14:14,17,22 28:15 72:21	represent 35:22 53:19 77:13, 15 79:23	response 12:19 13:19,20,23 14:13 15:10,14 16:1,14,21 17:1,5,7,9,22,23,24 18:16 19:1,3,11 20:4 21:18 22:12 24:12,13,21 27:14,16,25 29:19 30:8,12,15 33:6,7,10 36:13,14 37:19 38:9 42:8 44:1,19 47:6,8,18,20 48:8,11 49:1,7,15 50:9 51:8 53:10,18 55:17,18 56:25 57:9 61:15 63:11,12 64:6 65:20 73:17 75:15 80:16 81:8 82:4,7 84:15 85:11 86:3,4,12 87:1 89:1 91:4 96:3,16 99:16 106:3 108:20
referenced 82:20	representation 17:7 26:8 31:19 41:15 51:6 76:7 98:2,24 101:24	responses 6:3 12:25 16:4,8 38:6 51:3 56:13 58:8,14 63:9, 10 66:15 75:2,3,5,13 76:22 82:9 85:20 86:24 91:5,10 108:25
references 14:19 74:7	representations 29:21 53:16 110:13	responsive 50:1 51:6 55:21 64:13 102:12 110:22
referred 20:1,5 63:20 99:2	representative 6:6 14:1 18:20 89:15	rest 46:2 57:11,22 87:19 96:10
referring 18:5 20:2,9 66:14	represented 30:11 49:12 52:15 75:18	restrict 62:9 105:7
refers 13:25 51:16,19	representing 31:16 54:3 82:7 101:3	result 92:10
reflected 43:11	represents 26:13 31:13 79:15,18	revenue 68:18,19 92:13,19, 20,22 93:17 95:13 96:4 97:3, 22,24
refresher 80:17	request 42:16 76:13 91:3	revenues 79:21 92:10,14,16
refusal 49:4,6 103:18	requested 45:16 69:22 96:18	review 4:10,17 6:11 7:3 63:25 68:2 89:22 90:2
refuse 8:4	requesting 95:22	reviewing 14:19
refused 12:11 47:2 93:5	require 87:22	reviews 17:23
refusing 45:24	required 8:22 96:18 102:25	revisions 90:14
regard 37:24 100:22 109:20	requires 8:3	RFAS 90:19
reiterated 22:5	researched 64:5	rise 3:2 56:7,9
rejected 64:7	resisted 101:13	Roce 35:3 37:7 41:10 46:19 50:19
relate 102:19 104:20	resisting 45:24	Roce2 35:3 37:7
related 3:22 90:25 96:4	resolve 36:1 43:13 58:3,6 59:9 62:8 73:9 85:9	rog 28:10 58:16 95:21
relatedly 98:8,25 104:9	resolved 45:6	rogs 41:24 61:1 82:16 84:16 85:6 89:23 90:19 97:7
relating 79:10 98:9	respect 4:16 11:14 13:18 31:20 32:19,20 37:15 41:24 44:11 54:16,20 57:10,14 59:23,25 60:3 63:25 64:25 85:5 88:6,16 91:9,25 100:20 101:23 102:14 109:7	Rohan 70:19
relationship 25:3 31:6	respectfully 53:15 80:5 110:6	round 50:13
relative 5:9	respond 24:25 26:17 34:2,4 47:15 52:15,19 55:8 73:9 74:2,10 75:21 81:12 85:3 89:18 96:12 97:17 100:5 104:25	
released 46:11 50:17 51:18, 22	responded 52:21,22 55:17 56:18,19 57:13 58:17 60:3 63:17 73:20 78:13 89:19	
relevant 14:9,11,13 16:10 19:21 20:14 38:19 41:6,7 69:18 93:14 97:19 100:12 101:19 102:12 103:13 110:25	responding 58:10	
reliance 52:8,13 53:18		
relies 30:6		
rely 20:19 51:2 101:12		
relying 27:23 48:25 51:5 53:15 55:20 62:24 63:1 76:4 88:11		
remarkable 39:7,21 42:24		
remember 11:24		
repeated 86:16		
reporter 55:5		
repository 71:21		

31698

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

135Index: RSC..sold

<p>RSC 14:20 20:17 22:17 35:2, 16 37:7 41:9 45:12 46:18 55:6 59:5,23 60:9,14,22 61:5,10, 20,25 64:16 67:6 80:25</p> <p>RTL 7:25 8:4 67:25 68:8</p> <p>rule 11:8 42:15 81:16</p> <p>rules 86:7</p> <p>rulings 87:18</p> <p>run 93:11 107:21,23 108:17, 22</p> <p>running 108:10</p> <p>rushed 73:16</p> <p>rushing 110:2</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sale 36:23 38:19 80:20 92:10, 20 93:11 94:14,17,20 95:1</p> <p>sales 92:20 94:19,22 95:16 97:23</p> <p>sand 93:14</p> <p>sat 103:24</p> <p>satisfied 30:1</p> <p>schedule 9:20</p> <p>scheduled 7:3 9:6 22:8 102:21</p> <p>scheduling 12:16</p> <p>scope 57:17 105:7,14,21</p> <p>screen 77:12</p> <p>search 14:6 71:15 102:6,11 103:6,17 107:17,20,22 109:18,24</p> <p>searched 71:20,21,22 109:13</p> <p>searches 102:9 107:14,19, 22,23 108:10,17,19,22,24</p> <p>seated 3:3 56:10</p> <p>section 22:13</p> <p>SECURITY 3:2 56:7,9</p> <p>seek 34:12 38:21</p> <p>seeking 12:4 41:5 48:22 110:5</p>	<p>sees 35:16,17 40:24</p> <p>segment 58:25 60:25 66:3 77:25 78:1,2,7</p> <p>segmentation 58:25 59:1,2 77:25 91:12</p> <p>sell 64:5</p> <p>send 41:8 59:1</p> <p>sense 79:23</p> <p>separate 5:23 10:6 69:1</p> <p>September 9:2 12:12,13 40:3,7 59:9 90:7 97:15 103:7 106:19 108:21 109:12</p> <p>serially 8:18,21</p> <p>series 46:14,24 48:2,3,4,5,14 50:17,25 51:9,16,19,20,24 65:8 68:17 77:19 78:20 79:1,2 81:13 92:7</p> <p>serve 10:8 11:8,21 12:12,13, 18</p> <p>served 4:7,23 5:16 10:5 11:18 12:7,11 33:21,23 36:10 46:20 58:22 63:24 68:21 83:14 91:5</p> <p>service 10:15 11:5 12:2 92:16</p> <p>services 34:25 36:22 80:19 96:5 97:3,8,12</p> <p>set 6:22 9:20 12:19 30:7 33:6, 7 49:16 53:6 66:13 75:13 79:10 82:9 83:20</p> <p>shakes 89:14</p> <p>share 14:23 28:19 71:22</p> <p>shared 15:2</p> <p>sheet 68:1</p> <p>sheets 48:15 50:18,24 78:8</p> <p>ship 68:20 95:13</p> <p>shipment 93:10</p> <p>short 19:15 57:1 79:16 100:4</p> <p>shortly 7:21 58:22</p> <p>shoulders 57:25</p> <p>show 21:13 36:16 48:14 62:6 65:4 72:14 80:11 86:10 106:15</p>	<p>showing 70:8</p> <p>shown 49:7 62:21 75:4</p> <p>shows 68:16,17,18,19</p> <p>shrugged 57:25</p> <p>side 5:17 14:3 41:8,9 60:25</p> <p>sided 14:18</p> <p>sides 98:10</p> <p>sight 57:16</p> <p>sign-in 68:1</p> <p>significant 68:5</p> <p>similar 54:25 59:2 69:4 84:23 85:10</p> <p>similarly 37:16</p> <p>simple 25:23</p> <p>simply 6:20 8:10,12 39:7 41:18 43:6 45:24 67:21 71:9 73:23 76:19 98:13,22 99:22 100:2 103:13</p> <p>single 5:17 18:14</p> <p>sit 40:1 104:5</p> <p>sitting 87:8</p> <p>situation 23:23 29:25 88:10</p> <p>situations 45:21</p> <p>size 19:15</p> <p>skill 61:4</p> <p>skis 26:3</p> <p>slide 77:23</p> <p>slides 50:22 51:11 57:5</p> <p>slightly 88:17</p> <p>slipped 59:15 73:16</p> <p>slow 104:4</p> <p>slower 55:5</p> <p>small 46:5 61:18 85:18</p> <p>smaller 79:25</p> <p>Smith 3:15,16,18</p> <p>so-called 23:1</p> <p>sold 11:25 36:23 41:6 44:17 53:9 68:18 80:20 93:16,18 94:3,18,21 95:12</p>
--	---	---

31699

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

136Index: sole..T10

sole 53:17	statement 35:18,20,22 40:8, 25 41:1 68:12 83:16 84:17 85:5,10 87:23 100:4	sudden 74:18
sooner 7:1		sue 28:3,4,5
sort 19:20 22:3 36:4 45:25 49:13 86:7 87:11 97:24 99:4 104:19,24	statements 87:18	sufficiency 27:9 55:18
	States 42:13	sufficient 6:12 86:9 87:14
sorts 37:1 38:12 45:20 87:18	status 21:24	suggest 84:15
sounds 110:13	step 9:24 77:2	suggested 5:14
soup 14:21 20:15 23:1 58:25 59:7 60:24 65:3 83:22 91:11	Stern 3:9,11 7:21 12:14 32:8, 9,14 33:2,13,15 34:20 40:7,22 44:9 46:9 49:2 50:7 52:5,17 54:9,11 57:1,7,22 58:2,4,9	suggesting 38:23
source 6:11 69:14 72:25 73:13		suggestion 18:12
speak 26:16,22 27:2 55:5 58:2 62:17 90:9,10 103:12	stipulation 11:20	suit 19:6 25:15 94:7,11
	stop 36:25 100:3	sum 75:18
spec 72:5	stories 29:14	summarize 96:1
specific 5:2 14:12 18:3 20:13,14 22:15 59:21 63:19 74:23 105:5	story 23:24,25 25:8 103:10	summary 30:5
specifically 7:24 75:14 105:1	streamline 88:18	supplanted 7:8
specifications 8:8	stricken 36:2,5,7 37:12 39:24 40:9 41:22 75:20 84:14	supplement 7:18,24 9:4,15 10:11 16:3 30:12,16,20 33:9 39:16 63:9 68:21,22 75:23 76:2 89:23 90:3
specificity 5:5 20:3,21	strike 4:13 5:1,12 36:1 57:23 60:8	supplemental 4:5 7:8 11:18, 21 12:7,9 13:14 31:23 33:5 58:7,8 63:12 64:23 65:1,13 73:2 75:13,15 83:14 85:20 86:12 87:7 88:20 91:4 92:25
spelled 20:17 21:10	striking 59:10	supplementation 7:15
spent 68:5 69:9 71:24	string 50:7	supplementations 88:24
spirit 26:8 44:13	stuff 45:22	supplemented 19:14 23:16 68:24
spoke 58:9	subject 10:8 20:21 24:9 34:20 39:16 42:19 44:18 49:21 52:2 74:16 82:3 85:6	supplied 41:6
spoken 57:7 62:18,19	subjects 104:20	support 5:4 27:11 34:25 36:24 41:7 80:21 92:15
spreadsheet 69:3 92:18 93:2 94:1	submit 28:15 53:16 61:22	supported 5:23 6:8 88:19,22
spreadsheets 69:1,7,10 93:25 94:14,25	submitted 13:20	supporting 5:5 35:2 55:6
staged 109:10	subpoenaed 21:1 27:4	supports 77:5
staggered 9:5	subscriptions 92:14	suppose 102:8
standard 62:20 87:11	subsection 92:13,14 96:5 97:9	supposed 29:5 80:4 109:22
standards 61:9,10	subsequent 20:11 50:16	surprised 82:17 89:8,11 106:1
stands 61:24	subsequently 75:20	suspect 11:16
start 3:23 8:12 13:1 32:11 40:15 56:18 95:10 105:11 107:14 108:14 110:23	substantial 107:14,16 110:18	
starts 43:17,18,19 57:15	substantially 54:25	
state 19:20 53:14	substantive 86:3 90:13,17	
stated 58:4	substantively 38:20	
		<hr/> T <hr/>
		T10 70:19

31700

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

137Index: takes..understanding

takes 18:2 99:12	theories 5:8 57:14,18 58:19 59:18 66:20 87:6	110:25
taking 16:2 24:3 35:14 50:5 71:17 76:14 78:12 83:5	theory 60:1 103:10	total 75:18 79:14 93:17 94:19
talk 16:13 36:3 53:23 58:5 59:21 62:16 66:9 71:18 97:3 107:24	thereabouts 78:21	totality 38:13
talked 20:3 74:12 82:22 98:11	thing 6:13 12:6,24 68:9 86:15 87:5 104:24	transcript 35:23 52:12 57:22
talking 10:10 15:11 17:21 22:17,19 28:10 61:19 90:21 91:23 92:8 104:21	things 15:11 37:1,6 38:23 45:7 48:18 55:24 56:2 67:17 71:5 73:9 74:23 76:18 78:17 88:1 93:13 97:7 99:19 100:25	transferred 28:25
talks 18:4 21:21	thought 12:24	translation 73:12,20
TC 70:7,11	thousand 94:18,19	tree 89:14
TCP 59:1 77:25 91:12	thousands 103:2	tricky 28:3
technical 8:7,16 71:14 72:1, 19,24 77:20 79:10 99:1,25 101:23 102:1,11	three-year 79:20	trouble 79:4,9
technique 59:2	tie 67:5	true 16:25 17:1 27:17 50:14 56:17 67:21 69:4 71:6,9 72:25 73:23 76:20,23 86:15 87:5 105:25
technologies 14:2,15 20:14 22:1,15,22 23:2	Tier 3:5	turn 14:18 43:25 46:1 80:14 85:15
technology 101:5	time 6:24 7:3 9:18 12:11 24:8 25:5,10,12 26:2,5,24 34:3 41:7 56:21,25 57:21 58:1 61:12 67:22 68:5 69:9 71:24 72:16 78:21 79:16 90:23 91:5 95:16 103:25 105:4 108:4	turned 20:20 69:25 70:14
teed 49:22	timely 42:15	turns 16:7 40:24
telephone 18:7	times 41:11 68:2 97:6 105:16 107:25	two-thirds 67:2
telling 37:18 44:9 45:15	timing 6:20 7:10 9:4,18 27:4	tying 60:12 90:14
tells 55:12	Tina 106:18	type 69:5 90:20
temporally 38:21	title 70:11	types 72:3
ten 108:19 110:7	today 41:3 56:14,16 73:5 76:7 104:21	typically 87:22,23
term 56:14 57:12 59:5 63:8,14 83:19 91:12	told 8:25 9:9 39:9,10,22,23,24 41:11 42:20 45:1 47:9 48:17 53:19 54:3 59:20 62:12 63:9 69:20,25 70:4 71:13 77:1,9 97:5,9,10 99:6 100:9,20 105:13,15	<hr/> U <hr/>
terminology 77:24	tonality 32:16	ultimate 88:3
terms 14:24 15:17 16:11 25:24 27:3,4,12 38:18 45:12 61:5,13,14 62:21,25 65:22,25 66:12 67:14 68:6 72:2,6 76:14 77:16 78:11,14,16 81:22 83:23 84:3,4 85:10 100:15 103:6,11,17,23,24 106:4 107:17,20,23 108:2	tools 34:11	ultimately 15:16 25:8 26:1 34:14 104:5
testified 69:6	tooth 7:22	unable 8:18
testify 104:17,23	top 40:24 80:24	unaware 43:8
testifying 23:24 104:11,14 106:23	topic 104:9	uncharted 5:8
testimony 23:19 26:25 27:1 102:15 104:19 105:7	topics 19:7 85:14 104:11,13, 14 105:5,8,9,13,20 106:6,24	unclear 10:3 12:6 104:18
		uncorroborated 24:21
		understand 11:3,4 24:19 30:4 41:12 45:12 46:18,25 51:19 52:7,13 55:15 59:14 61:5 62:23 64:21 65:7 68:9 76:6,9,19 77:17 78:5,16,19 80:3 84:3 87:17,25 94:5 96:17,24 110:4
		understanding 11:11,12 19:25 44:14,17 57:18 59:23,

31701

ALACRITECH, INC. vs CENTURYLINK, INC., ET AL
MOTIONS HEARING, on 09/14/2017

138Index: understandings..yield

25 60:3 62:12 63:4,16 64:19, 20 65:19 66:13 77:16 78:11, 12,14 82:13 83:23,24 84:2 94:25 104:23 106:21	voiding 29:10	words 23:4 27:22 38:1 65:5 66:12,21 80:11
understandings 62:25	voluminous 70:9 88:20	work 17:15 45:20 68:10 73:6 93:22 99:19 109:17 110:19
understood 56:20 57:13 58:18 64:11 74:19 76:17 77:13,14,19 80:25 86:6 92:3 98:20 106:4	voluntarily 33:18	worked 25:4 99:18 103:4 110:19
unequivocal 35:23	VP's 71:19	working 8:12 13:19
unfettered 104:19	<hr/> W <hr/>	works 62:3
unholy 45:10	waiting 45:22	world 36:5
unique 36:11,21 38:19 80:18	waived 42:17	worth 70:3
unit 93:11 94:21	walk 61:13	wrap 100:4
United 42:13	wanted 101:11 106:5 108:22	wreak 41:20
units 93:17	warranties 96:5	write 40:12
universe 53:24	waste 57:21	writing 40:15 41:17 75:11
unlike 7:21 8:10	wearing 91:9	written 16:7 40:7,13 75:4
unmanageable 108:16 110:15	weeds 108:18	wrong 58:1 67:23
unqualified 44:11	week 9:2 103:7 105:6	wrote 41:3
unreasonable 89:25	weeks 6:23 9:7 19:24 22:14 27:5 45:21 58:8 88:15 102:22, 23 103:22	<hr/> Y <hr/>
update 4:2 5:14 8:17,23	weight 35:20	year 20:16 46:11 68:20 69:7
updated 5:11	whatsoever 75:24 76:3	years 94:4,24
updating 96:2,15	white 20:18 22:25	yesterday 4:8 66:25 90:19
upgrades 92:15	wide 14:7	yield 74:12 85:4
users 51:22	Wiki 71:22	
<hr/> V <hr/>	willful 13:7,21 28:4	
vague 14:14 38:20	willfulness 15:4 24:7 84:17	
variety 34:8	wishes 54:14	
verbal 21:21 23:7 27:23	withheld 28:22 52:9 72:8 101:25	
Version 70:7,12	withhold 55:20 56:13 57:12 63:7,13 71:14,25	
versions 33:11 47:1	withholding 76:25 79:9	
versus 3:5	witnesses 23:20,24 29:22,23 74:17 102:8,21 104:10,14,16, 17 105:5,14	
view 49:10	word 6:9 7:9 35:15 36:1,7 37:6,15,20 38:3 39:23 40:9, 11,16,17,19 41:21,22,25 42:4, 19 43:2,4,14,22 44:2,9 49:11 52:19 53:15 66:17 67:1,4 75:20,22 80:8 81:2 90:16	
vilified 58:13		
violated 30:8 84:8		
vis-a-vis 23:15 65:1		